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reference to the future imminent amendment and its application of a part of the proposed tightly controlled. That I believe to be a palliative effort to put on such help someone as to apply something reasonable.

I was asked to lay that aside as someone might consider it and discuss it. Perhaps there might be some comment from those who have looked into the matter. Is there any member of the committee who was here yesterday who might want to make a suggestion? Or was advocated, as we recall, toward the close of the discussion that we might have it applicable to existing sources' own brand, Mr. Domenici.

Senator Domenici. Existing sources and existing sites.

Senator Randolph. That is correct. I think you spoke of that possibility. I am not sure whether it was you who suggested it.

Senator Domenici. Yes, it was. I asked the chairman if he would consider looking into whether or not qualifying his amendment of limiting it to existing sites would be consistent with that which he wanted to do and at the same time would certainly greatly limit the applicability since we are dealing in the whole area of espionage. It is a fragile and subject to such interpretation.

I would therefore discuss an amendment to your amendment, which would qualify the applicability for this approach to existing sites and existing sources.

1 ... I would like to see the definition of the
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Mr. Holloman: The same as it would be for any other source. If their emissions would affect the Class I area, a notice was given and a notice of their affect on that area would have to be made.

Mr. Drahtswitz: The pollutants that are combined in burning are all the pollutants emitted in the source.

Senator Randolph: Okay, I would want to say that that was the intention. I thought that I had stated in presenting it. I am not asking that there be agreement, but that was my intention. With the modification here, it was intended and certainly from the standpoint at least of the offer that I made of the amendment, it of course is consonant with what I desired.

Mr. Cummings: The effect of that, Senator, would be that the emissions of such a source would be counted against the increment for any future sources coming into the area. It could use up the increment, but sources less than that size would not have to meet the increment themselves.

Senator Waskie: That is what I still fail to understand -- what that means, if it counts against the increment.

Mr. Cummings: It counts against the increment so that subsequent sources which do not qualify for this exemption may not use it.

Senator Waskie: What do you mean saying they don't have to meet the increment? Against this amendment, they would have

to meet the Government.

Mr. Gumbel: Yes.

Senator Gurnea: What would that mean?

Mr. Gumbel: It would mean that a demonstration by such groups involved bombing, and so on, that their activities would also violate the agreement. As necessary, it would require certain modifications of either the content or the location of the facilities so as to avoid exceeding the increment.

Senator Gurnea: Still the Government there is the risk that they would not meet the increment, that they would go over.

Mr. Gumbel: Yes. The purpose of this is to allow recognition of existing sites where feasibility is site locations, and so on, so that the increment is not available.

Senator Gurnea: What about the Government's position?

Mr. Gumbel: That is what it does. It limits it to the existing sites which was the justification in the first place.

Mr. Gurnea: Mr. Chairman, by the Government's modification, this agreement essentially creates a similar test -- not an identical test but a similar test -- so that 50-ton allowable or less applies to the test similar to that which the committee adopted last year with respect to existing facilities in similar areas, which said that they could expand if they met that available control technology.

Under that provision there is a threshold capacity because there are areas in which the Government would not expand, and

in this case, that, but it is a somewhat similar case,

Senator Muskie. The one that we are talking about is a similar degree of control over the use of the instrument.

Mr. Muskie. Yes.

Senator Muskie. So the instrument could disappear with some policy in place to protect against that or to give the public control over it.

Mr. Muskie. The point could be to provide further proof that the fact that there would be up the available instrument or more than that, and that would stop any other measures from ever coming into that.

Mr. Bratton. If they went through the modeling techniques as they would under the normal bill, they could also use in the instrument that way.

Senator Muskie. I understand. Any economic activity you may want to do. At least you are using it even, your eyes wider open.

Senator Muskie. On the other hand, Mr. Chairman, we argued the point whether or not we were going to count in passing known transactions against the instrument lesser sources than major criticism and the conclusion was no, as I understood it.

Senator Muskie. But you are adding to the problem.

Senator Muskie. Mr. Chairman, could I ask one more question as part of the 751, Section 4, subsection 4. There is

agreements, some conditions for the order, and however to
 2 answer, and the question is under subsection (a) at the bottom
 3 of the page, there is a dispositive commitment on the part
 4 of the owner/operator. The public-use and public order will
 5 not constitute, I understand the essence of this agreement
 6 would be a public useage under 50 years.

7 The question is, does the State's Director still have the
 8 authority under this agreement not to grant a permit?

9 Q. Challenge. Yes. The judge says, that. First, the
 10 way this exception is drafted is only an exception from the
 11 Class II language, not from the Class I procedure which is
 12 spelled out in paragraph 5, cases 14 and 15.

13 Secondly, Section 116 continues to apply. Section 116 says
 14 that a State for its own purposes, its own reasons may not
 15 grant a permit or impose more stringent controls.

16 A. That leaves the two ways in which a permit may not be
 17 granted to what a State purposed by this exception. One is if
 18 there is an interest on Federal lands or some other Class I lands
 19 and that process is followed. The second is if the State itself
 20 chooses to impose more stringent controls.

21 Senator Herr. This agreement could go into effect and a
 22 permit, if you will, to not permit drilling will be denied a
 23 permit under those conditions you have stated,

24 Senator Herr. Absolutely. Absolutely.

25 Senator Herr. That is the finding now which that permit

1 is not possible?

2 Mr. Cummings. The class is smaller.

3 Senator Hart. What is the class Class I standard?

4 Mr. Cummings. What is the standard imposed on the Air
5 established in the Class I and. Where is the limitation on the
6 reasons that the State can give?

7 Senator Hart. As the State can establish other reasons
8 and the permit number can deny it as these reasons?

9 Mr. Cummings. Yes.

10 Senator Muskie. But if the State doesn't violate Class I,
11 then what? If the State doesn't set up additional requirements
12 of its own and the source doesn't violate Class I, then what?

13 Mr. Cummings. The purpose of the exception is to exempt
14 such a source from the Class II limitations.

15 Senator Randolph. Copy and other members, if you would
16 permit the Chair, I have to go now back this afternoon,
17 because the Senate is not in session. I have appointments as I
18 am sure others do. I will work these appointments into the
19 committee meeting. Senator Muskie, do you have any suggestion
20 as to time of reconvening as a possible course?

21 Senator Muskie. I have to leave for a national committee
22 hearing on two matters. I am sure back any time it suits the
23 rest of the committee this afternoon, I think. I don't think I
24 have any commitments except a prior lunch hour. Moreover, since
25 the rest of the committee is all there when we have to go

1 Mr. Tolson.

2 Senator Hatch. I think we had not a quorum now, Mr.

3 Chairman. We have seven and have our quorum (a cry from the gallery) so
4 we will have a quorum.

5 Speaker Thompson. Mr. Chairman, I want to leave and go to
6 the budget and energy hearings.

7 Senator Thurmond. I have to leave because I have an appointment
8 next on the car bill coming up in about ten minutes, but I will
9 be in and out this afternoon for a quorum.

10 Senator Bentsen. I am trying to determine for this afternoon
11 noon. I will be in and out. Senator Mickle can carry on later
12 today, as I understand, this afternoon.

13 Senator Mickle. As far as I know, I can stay.

14 Senator Bentsen. And I will try to be here as close to
15 the chair as possible. Then we will adjourn at 1:30 this afternoon.
16 Question, are you in here then?

17 Senator Baughman. Yes, I can be here at 1:30.

18 Senator Hatch. I cannot be here at 1:30. I can be here at
19 2:15, but I will be back as quickly after 2 as I can.

20 Senator Randolph. That will be four of us on this side
21 and one of us on the other. We will adjourn at 1:30.

22 Senator Hatch. We have a quorum if you put the Treasurer
23 here besides you.

24 Senator Mickle. Are you ready to vote?

25 Speaker Thompson. Yes, we have a quorum.

Senator Chandler. To do that you are the business agent
agent.

Senator Chandler. I think the conditions advanced by Senator
Chandler to his amendment.

Senator Randolph. I accepted it.

Senator Butler. That is fine.

Mr. Yeager. Senator Anderson.

Senator Randolph. So sorry, yes.

Mr. Yeager. Senator Baker.

Senator Baker. Yes.

Mr. Yeager. Senator Peterson.

Senator Randolph. So sorry, yes.

Mr. Yeager. Senator Chandler.

Senator Chandler. What is this?

Senator Chandler. This is my amendment as amended by
Senator Chandler.

Mr. Yeager. Senator Chandler. I do not think that Senator
Chandler proposed yesterday.

Senator Chandler. The 15 was proposed today.

Mr. Yeager. That will be really only a control in relation
to the.

Senator Chandler. Yes is yes. I don't want the debate.

Mr. Yeager. Senator Chandler.

Senator Chandler. Yes.

Mr. Yeager. Senator Chandler.

- 1 Senator Bay: No by proxy.
- 2 Mr. Bay: Senator American.
- 3 Senator American: Yes.
- 4 Mr. Bay: Senator Gravel.
- 5 Senator Gravel: Yes by proxy.
- 6 Mr. Bay: Senator Hart.
- 7 Senator Hart: No.
- 8 Mr. Bay: Senator Hoffmann.
- 9 Senator Baker: Yes by proxy.
- 10 Mr. Bay: Senator McCarthy.
- 11 Senator Burke: No by proxy.
- 12 Mr. Bay: Senator Wicker.
- 13 Senator Wicker: No.
- 14 Mr. Bay: Senator Stafford.
- 15 (No response.)
- 16 Mr. Bay: Senator Miller.
- 17 (No response.)
- 18 Mr. Bay: Senator Buckley.
- 19 Senator Buckley: Yes.
- 20 Mr. Bay: (The amendment carried by a vote of eight to
- 21 four.)
- 22 Senator Hoffman: (Mr. Chairman, is it possible to put a
- 23 vote is taken on I don't know what this is all about.
- 24 Senator Buckley: Certainly, there is no question. Are
- 25 there other amendments?

Senator Dixon. Mr. Chairman, I have no objection but if you want to delay it until later I will not mind so being so late.

Senator Randolph. I will postpone our amendment now.
 Senator Chafee. Mr. Chairman, on that last vote, I hope is a little late. I never noticed I am not considerably familiar with it. If I could reserve my vote and vote it later on, I should think it will affect the result. Is that satisfactory with you?

Senator Randolph. You are the person who makes the decision on your vote.

Senator Chafee. Is that the rule?

Senator Randolph. Yes. That is the rule. Do you withdraw your vote?

Senator Chafee. Yes. I should like to examine a little more the vote, if I am permitted to do that.

Senator Randolph. Yes.

Senator Chafee. Thank you.

Senator Randolph. Then day is the vote?

Mr. May. There is four.

Senator Randolph. Any more delay?

Senator Dixon. Mr. Chairman, I thank you for the opportunity to call on my amendment, which is a rather nice one on the committee's proposal. There is a amendment from Mr. Chafee which is the committee that I believe is at least a good deal of the amendment provided by Chairman, and so the case of

coal-fired power plant which would be 20 years old or older, over the course of 20 years. The Commission is currently reviewing the Commission's position on a complete nuclear reactor.

Mr. Chairman, I think you that this is a limited exception for certain reductions from the 1970 Act, particularly for the class of power plants. This class of power plants represents less than 10 percent of the total power generating capacity and probably less than 10 percent of the total power generation. These plants are being phased out of operation.

The Commission has tried to balance the interests of the public and the interests of the industry. The Commission is currently reviewing the Commission's position on a complete nuclear reactor. The Commission is currently reviewing the Commission's position on a complete nuclear reactor. The Commission is currently reviewing the Commission's position on a complete nuclear reactor.

While I believe the Commission is currently reviewing the Commission's position on a complete nuclear reactor, I think we have also received information from the industry that it is not possible to justify the Commission's position on a complete nuclear reactor.

The average life of a coal-fired power plant is 25 to 30 years. During the last 10 years of operation these plants are typically being operated at lower capacity factors. I believe that the Commission is currently reviewing the Commission's position on a complete nuclear reactor. The Commission is currently reviewing the Commission's position on a complete nuclear reactor.

Mr. Chairman, this is the Commission's position on a complete nuclear reactor.

1 could be the answer. I had previously said that we, the
 2 world, had chosen nuclear as the answer. Nuclear power
 3 technology and initially the nuclear technology is what
 4 we focused upon the progress of the technology but it
 5 that at the time the power will grow, as staff has pointed
 6 out to me, I said that; especially because the Congress
 7 intended that they completely exercise control but that the
 8 not use subgroups and was subject to the international that
 9 placed on it by IAEA.

10 Since that time, the courts have ruled that the language
 11 is not ambiguous and, as regards to the nuclear control
 12 strategy which does not include the possibility of local nuclear
 13 this power is a license of power to the which went ahead with the
 14 space and that in these old plants.

15 Mr. Chairman, I think that there is no inconsistency
 16 because our general intention of principle for continuous
 17 nuclear control and our recognition of the fact that in the
 18 case of the very large coal-fired power plants, that they ought
 19 to return to what was thought to be the national control
 20 strategy at the time.

21 The costs of generating electricity at these old plants or
 22 the average will be increased to about 10 and 15 cents --
 23 the operation and maintenance cost -- will be increased to the
 24 average of 10 percent if they want to keep the old plants and
 25 retrofit to continuous nuclear technology.

which it had to be removed by statute and I think that is not a realistic prospect.

I think, Mr. Chairman, that only in the case of plants 25 years old or older -- which, as I say, will represent probably 10 percent of our electric generating capacity in the country -- only in case of identified, steel power plants should we permit them to go forward now with the control strategy that you at one time thought to be the national policy. That is to say, the tall stack strategy. That is the reason for this amendment, Mr. Chairman, and I urge its passage.

Senator Randolph. Senator Baker, I want you to tell the members of the committee the number of installations that you estimate from your study would be affected by the tall stack provision that you wish to insert.

Senator Baker. The figures that I have, Mr. Chairman, are that there are 115 coal-fired plants nationwide which are 20 years old or older, and that represents 15 percent of the total plant population in the country and 10 percent or less of the coal generating capacity in the country.

Of these 115 plants, 100 are 20 years old or older, according to EPA, and the rest of compliance are plants which are 20 years old or older. Only about 20 of these are of the 1.1 pound standard that is found in my part of the country. Of 75% of these, only about 20% have been identified and the average age of these 20 is about 20 years old.

separate. The 37 coal-fired power plants are online in many ways but the capacity drops because of their excess capacity. Like the 37 separate power plants that are brought into operation during emergencies, there are frequently 150 megawatt or 200-megawatt power stations. The 37 is the least. It is the very, very large coal-fired steam power plants in the 150s. It is these very large plants that would be extremely costly to go back and retrofit for continuous operation and in many cases these plants have already invested in all kinds of equipment to implement the control strategy they thought was the national policy.

Senator Bennett. I notice that you speak of the 25 to 40-year-old coal-fired unit average. Is that and you indicate that these plants are typically, you say, being phased down to lower capacity factors. Did you perhaps circumvent that, not draw the conclusion of your argument that almost all of the lower capacity factors and that is being done.

Senator Bennett. Mr. Chairman, every power plant of course has some life expectancy. The actual number here varies from system to system and according to the load characteristics of the particular system.

For instance, with Consolidated Edison, many of their very old plants continue to be in service, but these old plants are in service for other and different reasons -- in some cases because of the nature of the availability of investment of

defined, in some cases because that was a matter for special
circumstances in relation to existing living arrangements;

"Normally, a plant will be phased down gradually to the

plant where, instead of being a base load power plant, operating
more or less continuously, it will become a peak load plant and
the total amount of electricity generated by that plant will
be reduced, although its capacity to generate electricity will
be unchanged. It will be some time from now that it can come
into service.

Senator Goodwin: One final question. Perhaps it will be
the final question. I notice in the proposal that you speak
of budget use of existing funds. I think I know what you
are thinking of, but would there be any indication or plan
with the word "new" here to mean that the building of plants?

Senator Baker, Mr. Chairman, it could be done. You could
build these base load plants - I think old plants. As I say,
there are only 140 of them in the country which represents 10
percent of the total power plant population. That is most
passed - and I was speaking more about the potential short-
falls in the case of TVA - some plants have already been built
at a time when that thought they were in accordance with a
program that TVA has accepted for the clean air act records,

The answer to your question is yes, in that indeed number
of cases the old one-time base load plants to reach old or
plants could employ a base load capacity in order to meet the

1 subject involved.

2 Senator Thompson: I guess you are the researcher in the
3 operation.

4 Jeff:

5 Senator Hart: Now, just to recapitulate the facts, you
6 say there are 149 plants involved potentially.

7 Senator Baker: Yes.

8 Senator Hart: That is question number one.

9 Mr. Harbo: Let me proceed to the. There are 149 qual-
10 ified plants that are over 10 years of age. Of those, some are
11 already in compliance with the 1.2 ozone emission limitation.
12 Some of those emission limitations are the four-pound or a
13 five-pound standard. There are only about -- and this is a
14 rough EPA estimate -- 40 plants that are on the 1.2 standard
15 that are in this category.

16 Of those, 4 are in compliance and there are five plants we
17 are working on that exceed about 200 horsepower. Some of the
18 plants are as small as 10 horsepower, and they have all come
19 into compliance with the use of coal-burning fuel.

20 The potential sulfate that will probably be eligible for
21 economic incentive would be probably closer to the 10-plant figure
22 than to the 149-plant figure. Clearly, some of the plants are a
23 capital dependent and represent the category that will have to
24 be replaced without much available resources, especially if
25 they were only on a four- or five-pound standard, rather than

with the the one which was built and very high the 1.2 standard
because of these conditions that there was necessary for the
substantially in the area.

Mr. Reed: Let me respond to Senator Hart's question —
Kaiser's interest in the area.
Mr. Hoffmann: Yes.

Mr. Reed: Was that was not a reflection of the age of the
plant. It was obviously not in the case of the YN.

Mr. Hoffmann: That is right. It was a judgment on what
the ambient air quality would require.

Senator Hart: Back to the question of that percent of
capacity utilization. Does Kaiser represent or that the 197
recovery. I think Howard said that as far as about 10 percent.

Senator Reed: The percent of the capacity and 10 percent
of the plants.

Mr. Reed: Senator, that is based upon the fact that
these older plants tend to be smaller than the plants built
since 1970.

Senator Hart: What percent of the coal-fired plants? It
is well over a third, isn't it, of all coal-fired generating

Mr. Reed: Are over 70 years old. That is what the
statistics are 75 percent.

Mr. Hoffmann: Yes, 75 percent.

Mr. Reed: Of the coal-fired.

Senator Hart: Is there a third of the coal-fired generating

1 plant would be affected by such treatment.

2 Mr. Herod: Do a plant-to-plant connection exist?

3 Mr. Cummings: How many of these plants have existing
4 stacks as opposed to those who might build stacks?

5 Mr. Herod: On the TVA system?

6 Mr. Cummings: No, of the power plants in question. How
7 many of these have attempted to comply by constructing stacks
8 in this interim period as opposed to those who might in the
9 future build these tall stacks? Do you know?

10 Mr. Herod: I don't know how many. Thirty-three or 34
11 have undertaken to build tall stacks.

12 Mr. Cummings: How many of the TVA plants?

13 Mr. Herod: Of the 3 that have built tall stacks and tied
14 to it as 1 plant, they have built the stacks but not tied them
15 in at 14 of the other plants and 2 of the plants they have not
16 built tall stacks at all.

17 Mr. Cummings: In other words, with respect to the word
18 'existing,' there is a possibility that the word could be construed as
19 having existing tall stacks.

20 Mr. Herod: It could be.

21 Senator Cohen: These are the four have already gotten the
22 tall stacks, which is the point I made a minute ago, even. That
23 is, they built these stacks at the time they thought that it was
24 the national policy.

25 Mr. Cummings: / now trying to understand the distinction

between these two different types of interpretation and
 secondly the question of the theory.

Senator Gurnea: What is the action of the cell against
 the body's effect the quality of the air in the room, does it?

Senator Baker: It is a filtered machine. If the stack
 is tall enough to get above the currents of the air, it
 disperses the discharge over a wider area. It really is just
 a product of the fundamental limitation capacity of a larger
 body of air instead of a smaller area of air that would be
 affected with similar speed. It was originally, I think, a
 concept that derived in England from their techniques for
 eliminating the so-called litter bugs in London.

They had a very large cell stack there in order to get an
 effective dispersal of the waste beyond the local area.

Mr. Gurnea: They sent it to France.

Senator Baker: Over the North Sea, they could hope.

Senator Kirk: Would I let the committee staff know
 any of the plants that would be affected by this treatment as
 to air quality problem areas or nonattainment areas, either
 under secondary or primary standards.

Mr. Goodfellow: We would like for information on a
 regional basis, and then is going to require that controlling
 individual regions. As in the future the answer, we do know
 that a number of non-attainment areas in Ohio, Indiana, and
 the Midwest where they were nonattainment under secondary standards.

1 We do not have the answer to your question;

2 Senator Baker. One answer to his question, Gary, is that
3 perhaps an iron amendment would permit some to violate the
4 safety conditions in any case, some full stops or otherwise,
5 unless or otherwise.

6 Senator Hamilton. Senator Hamilton.

7 Senator Hamilton. I have a couple of questions, Board.
8 I want to tell you I must leave and go to two other meetings.

9 Let me say this. Are we talking about plants that have no
10 permanent control strategy in place at all? I am not familiar
11 with the coal industry. When we talked about the copper
12 industry, we spoke about an intermittent control strategy and
13 when we speak of that strategy we frequently speak of tail
14 stream or tail strategy like it. In the copper industry we have
15 said they put in permanent controls to the extent that they can,
16 that is the tail plant that you heard us talk about.

17 And then because they cannot retrofit beyond that, you
18 permit the intermittent-control strategy under very specific
19 limitations in the Senate amendment.

20 Of the point that this amendment addresses, is there a
21 permanent strategy that is acceptable, that is in between, that
22 we are not restrictive on these plants?

23 Mr. Brown. Let me respond to that on the basis of the
24 strategy that they would need to undertake if this amendment
25 passed.

first of all we are not talking about a independent
control strategy. We are talking about a control strategy. This
is the tail speak. In addition to that, what this would do is
it would change the operating cost since an emission rate at
these plants. That emission rate would be higher than it would
be if the stack height were not taken into account. Now, would
then have to deal in as being a further strategy, either a
completely fuel strategy, a coal burning strategy and as one
plant use a scrubber strategy in addition to the tail speak to
meet the emission rate.

The difference is that it would be substantially less
costly than a strategy of putting scrubbers on the entire plant
to get it down on a rate which would be without taking into
account tail speak.

Senator Dole: Is the original limitation going to be
 we want to see additional number.
 Mr. Dole: It is now, but it may not under this amendment
 if they were to go to ball stacks.

Senator Dole: Why not? Why can't we go to the end of
 technology in between and, if it is more economical, supply
 what it is the ball stack?

Mr. Dole: In essence, that is what they are doing. The
 question is which comes first, the ball stack or the indigenous
 source. At point at time, when we build the plant, they
 remodel the stack to get the emission rate to meet the
 standard.

Senator Dole: The point has been made that this
 applies to plants that are 20 years old or older, but nothing
 has been said about how long those plants might be expected to
 exist.

Do we have any law, power plants, just we would make an
 exception for, what else? For another 20 or another 30
 how long?

Mr. Dole: Look on the basis of average life expectancy
 they would last for an average of 30 to 40 years.

Senator Dole: Average is 30 to 40 years?

Mr. Dole: Right, but they would be operating at old
 capacity levels during that period because they gradually start
 putting them through the process of new plant capacity.

1 lower planks in the system.

2 Senator Hart: It is proposed that the same principles
3 would apply to other sources besides those there besides coal?

4 Senator Baker: Mr. Chairman, it is not proposed in this
5 amendment, but it could be proposed if you wanted to do it.

6 I think that control strategies are different in other fuel
7 techniques.

8 Senator Hart: Are the problems the same?

9 Senator Baker: They can be the same in high sulfur oil,
10 for instance. They can be the same.

11 Senator Hart: I think what we would have at the very least
12 is plants burning other fuels coming in and asking for the same
13 thing and then the lid is further off and the number of plants
14 goes up into the hundreds.

15 We are seeking for various deregulation of this legislation
16 I think. I don't know why you would make an exception for coal.
17 I think the same principles ought to apply to other fuels and if
18 they apply to other fuels, then you are really talking about
19 more than 100 plants; systems they is.

20 Senator Baker: There is one reason that it seems to me we
21 ought to take account of. I don't really think that I have any
22 necessity to define my views on environmental policy, nor on my
23 dedicating a continuous control. But we are going to lose the
24 people here if we can't deal with sulfur dioxide. If we
25 don't do this, we can't do anything else, as far as

of 1 1 plants there are 10 years until we might well increase by 50 per
2 cent. I don't know how well identified we are that added
3 to the price of manufacturing, slightly being increased at a 50
4 cent rate. If going to raise a reaction, I think, there would
5 be a gain.

6 That is exactly what I was in mind when I said initially
7 that I did not want to be involved in introducing this amendment
8 easily. It is not in passing with the way I felt on the ques-
9 tion of conscious control, but I think it is a matter of gen-
10 eral concern that we have in the degree of flexibility on that
11 as they - viable and workable environmental programs.

12 I think, Mr. Chairman, that is an important thing to do.
13 It may be that there will be other fuels that will have similar
14 concerns. For example, I don't know of another fuel that has the
15 extraordinary cost of control. I don't know of another situa-
16 tion where a system, as in the case of coal-fired steam plants,
17 brought they were in compliance with Federal policy at the time
18 when they turned out and by political interpretation not as he is

19 I don't know of another case where the Congress is as
20 close as it will be in this case. Mr. Chairman, I think would
21 be acceptable with amendments.

22 Senator DODD: And what would have been with respect
23 Chairman asked you that introduction of the status of the law
24 moving to the world interpretation it otherwise. Is that
25 correct?

Mr. Hatch: Yes.

Senator Hatch: There are others.

Senator Hatch: Do you know where the others are planning to go? Have they anything to get themselves ready for the coming?

Mr. Hatch: One is the TV system. The other mentioned a new L. V. A. system. They would use both kinds of this kind of system--adopted.

Senator Hatch: The other ones?

Mr. Hatch: There are four others that are covered by this standard.

Senator Hatch: The other I am asking is I am an item of equity in addition to Federal's position of balance, and flexibility. I am as aware of equity in broad the world in confidence and spend the money.

Mr. Hatch: About others that have done anything yet? They would come under it, if I understand the question. We don't have the way, but a number in addition to the three that have been specifically not to be asked a decision.

Mr. Hatch: There are a number that have not yet?

Mr. Hatch: There would be some additional ones that might be tall stacks. That is true -- some of the points on equity discussing earlier.

1 Senator Baker. While we are looking this record, what
2 person's views of the bill, in essence, are dependent upon his
3 or her perspective.

4 My view of the legislation and its implementation all
5 along is not sure it has been and perhaps not perhaps that
6 it has been too flexible.

7 I think any objective student of the history of this
8 legislation, whether you are talking about mobile or stationary
9 sources, would come to the conclusion that there is an enormous
10 discrepancy in it and an attempt, while at the same time
11 achieving a national objective, to be concessions to this or
12 that interest.

13 I think there is no question that that has been the history
14 of this legislation, and a number of others as well.

15 I suppose one person's flexibility is another person's
16 concession. So I would not state Senator Baker's view that
17 this is an overworkable, inflexible piece of legislation that is
18 going to destroy the country in whatever, unless we make some
19 other changes to it.

20 Another view of it is that this would be a major breach
21 in the commitment to the objective to be followed by a number
22 of others involved, and that the achievement of it would be
23 a substantial collection of the country's commitment to clean
24 air in the air in this country.

25 Another person. All I could say, Gary, is I didn't say

1 If you going to Senator's committee? I said it was going to
2 discuss the situation.

3 Senator Harding. Will the Senator visit for a question?
4 What do you do about a plant that is 20 years old and is
5 too old that years it is remodeled and put in a different
6 boiler and different system?

7 Or what happens if this old plant could become obsolete
8 sometime in the future if apply to the remodeled one or the
9 remodeled building? Does it apply to the new building or the
10 addition to the new building?

11 Mr. Webb. This applies only to units that were in
12 service prior to July 1st of 1957. If they add any additional
13 units at an existing site, they would not be covered.

14 Senator Harding. What about the existing site and the
15 existing unit? Supposing they change the whole concept of the
16 boiler and the whole works?

17 Senator Webb. If they change out the boilers, for
18 instance, it seems to me it would be a new site and it would
19 be a new facility and would be subject to the requirement.

20 Senator Harding. If that old plant, the old plant,
21 was so remodeled

22 Senator Webb. Yes, you would. If it really became
23 after power plant laws were passed and entered into
24 of regulation and it is not subject to the regulation and
25 the use of authority of the government. It is not frequently

1 Mr. [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
2 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
3 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
4 of it. It's possible power plant cost is not located, that the
5 plant to locate would have to install equipment, is that correct?
6 Senator Baker: Yes.

7 Mr. [unclear]: It would be subject to new source performance
8 standards.

9 Senator Bents: That goes into the economics of the
10 decision in the sense that the cost to the new plant power
11 producer is going to be greater and ultimately the power that
12 new sources produced is going to be more expensive?

13 Senator Baker: Let me know if I can. I don't think
14 it really works that way. That, it might work that way if you
15 are considering this as fairly new plants, but for plants that
16 are 20 years old, say it costs you 50 percent of the initial
17 cost of the plant to install continuous control strategy, which
18 is what is suggested in some cases, you have 50 half of that
19 cost and can be realized only the remaining five or 10 years
20 of that plant.

21 Mr. [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
22 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
23 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
24 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]

25 Mr. [unclear]: This is another question regarding question

1 since a major modification was involved.

2 Any other modification would only become subject to new
3 source performance standards if the effect was to increase
4 emissions other than those emissions were prior to the modification.
5 then.

6 Or if they took out the boiler and put in a new boiler,
7 unless it happened emissions it would not be subject to new
8 source performance standards. That is the way the new source
9 provisions of the law are written.

10 Mr. Baker: New source standards.

11 Senator McClellan: That wouldn't be the effect under this
12 amendment, would it?

13 Mr. Billings: Senator Gerdner asked the question what
14 would happen if one of these facilities was modified in a
15 major way like a boiler was redesigned.

16 Senator Baker: And my reply to him was that it was going
17 to be less than 40 years old and would not qualify for this
18 amendment.

19 Senator Gerdner: I just because that would be a new
20 construction.

21 Senator Baker: That is what I am interested in.

22 Mr. Billings: I think they would have to be justified.

23 Senator Baker: I don't think. That is what it would
24 be.

25 Senator Baker: But on it's 40 year or question mark.

1 included I don't think I got it all right.

2 What are the power rates? A company like the consumers
3 in the company, of a company like Louisville Gas Electric,
4 which I understand has installed scrubbers, compared to EPA if
5 this consumer goes into energy, and then compare those two to
6 national rates or other parts of the economy?

7 Senator Baker: The principal distinction between
8 Louisville Gas and Electric, which is your choice of illustration,
9 is that they are building about plants in the range of 200
10 megawatts.

11 We are talking in plants of 1,300 to 1,500 megawatts. The
12 cost differential in continuous control technology is enormous.
13 It is fairly easy to control a 100 megawatt power station with
14 scrubbers or catalytic.

15 It is extremely difficult and costly to control these
16 megawatt plants built 20 years ago by the same strategy.

17 To have an exact comparison of a 100 megawatt station with
18 scrubbers and a 1,300 megawatt station without scrubbers, I
19 think you're right, and the figures I am sure could be generated
20 and the relative cost probably wouldn't be very different -- not
21 because of scrubbers particularly, but because of the impact, the
22 vast increase in cost for large plants versus those of very
23 small plants.

24 Senator Mack: I am really talking about the cost to the
25 consumer of this air pollution. I mean those figures

1 would be reliable.

2 Senator Baker: I think I am right. I am sorry, I was
3 talking and didn't hear your last statement. I think I am
4 right in saying there has never been a coal-fired steam plant
5 as big as these TVA plants, there has been restricted air
6 continuous control standards. It never has happened.

7 Senator Walling: Mr. Chairman.

8 Senator Randolph: Senator Walling, yes.

9 Senator Walling: Now, what if we were to take this life-
10 span figure that you are talking about that is remaining on
11 there — and I can see how they increase the cost of
12 electricity for a period of 10 or 15 years — but if we do this
13 wouldn't it in effect prolong the existence of those old plants
14 beyond their useful life because people know that they have
15 this more expensive technology to build?

16 Senator Baker: I doubt it, no. I think the likeli-
17 hood is that other factors are going to retire those plants
18 other than just this way of complying to control requirements.

19 I think the life of the turbines, the boilers, the piping,
20 advances in technology, all relative costs in maintenance,
21 to have low electricity, and these advantages for generating
22 cooling power are more likely to determine the life span of
23 these plants than the cost of control strategy.

24 I think that the Senators(1) believe this is because
25 of the life span of the cost of control strategy mentioned.

near a relatively short period of time with no increase for
two but it will take those things somewhat more some time
that would have been considered.

Senator Mallory. Wouldn't it then be a good idea to put a
time frame attached on this amendment?

Senator Baker. If you would like to do that, I would be
glad to.

Senator Mallory. It would make us more comfortable.

Senator Pendolfin. What was your question?

Senator Baker. The Senator ask, Mr. Chairman.

The question is whether or not there would be in effect
a sunset provision on this Amendment. The Federal age for a
power plant is established between 25 and 30 years. These plants
are now 15 years old. You would get another 20 years in
the sunset provision which would make it 1987.

The question was if we wouldn't really put a sunset
provision on it or was king.

Senator Pendolfin. I understood.

Senator Baker. The projected retirement dates for the
plants. Mr. Chairman. In 1985, 1986, 1987 through 1994,
approximately, 1995-1996 through 1997-1998. Is that correct to do
that?

Senator Pendolfin. Thank you.

Senator Pendolfin. Mr. Chairman, I understood the story
that the energy bill would be passed in the summer of 1987.

1 installed on Flney Street now, they would be amortized over a
2 shorter period of time and therefore the rate base would be
3 almost as distinguished from a new plant going on line now in
4 which the amortization would be over a long period of time.

5 I am an expert on rate making, but I believe the rate
6 making authority could amortize the capital costs over a long
7 period of time, whether the facility were in use or not. I
8 assume that TVA, not being subjected to regulatory authority
9 in the same manner as all other utilities, could choose to
10 amortize it over a longer period of time if they desired to.

11 I am not sure that there wouldn't be a question if they
12 did that because they would be charging into a future period of
13 time for a facility not then in use.

14 But the other side of that, as I would put it, is where
15 does this put people who are not under TVA compared with it?
16 I am not sure we can go back and look at comparative costs in
17 Kilowatt hours because there are so many variables involved.

18 Suppose that. Suppose it takes the other side of your
19 argument. It makes eminent sense that if you build a new plant
20 with scrubbers so if you are going to have to construct for
21 customers were that if you didn't have scrubbers.

22 Suppose another. That is right. But if you have an old
23 plant and you scrubbed on it, you amortize it over a shorter
24 period of time because that is a longer period of time. They pay only
25 that amortized rate -- that long amortization, and then if they get a

1 And I think that that is the natural point because it was
2 built at the time the price was lower.

3 But there are all other kinds of variables in regard to
4 the cost of the power and the cost of the fuel, the tax and
5 whether they are a non-paying utility or a tax-paying utility,
6 whether they are using coal or using oil or using natural gas
7 or hydro, or what their life may be.

8 I am not sure a comparison of rates is going to tell us
9 very much.

10 Senator Baker. I might say one word on rates though. It
11 is hard for most people to understand, but I am sure all my
12 colleagues would grasp it instantly.

13 Senator Randolph. What was that?

14 Senator Baker. There are great advantages, of course, to
15 having a nonprofit, non-tax-paying, publicly-owned utility, as
16 TVA is.

17 There are great advantages to that, but there are some
18 disadvantages too in terms of the rate pay.

19 For instance, is the case of construction. Construction is
20 unique of all the non-proprietary procedure. That is, that you
21 spread the cost of the facilities over a period of years and
22 paid the cost rather than you would otherwise pay.

23 TVA pays no taxes. The oil industry is so much like
24 those guys directly into the bag of surplus. As while the
25 Federal Government really is a kind of the bag of control

1 necessary with preliminary cost-benefit comparisons, only the
2 procedure which it is with this.

3 So we are inclined to give most of service from this
4 strategy. It puts into our rates practice than it does with the
5 Federal Power Company because the Federal Treasury is not
6 subsidizing a part of it.

7 Senator Downham. Mr. Chairman.

8 Senator Randolph. Yes, Senator Downham.

9 Senator Downham. I want to express my concern in general
10 language and ask Senator Dixon if perhaps he and his people
11 could figure out if my observation and thought makes sense on
12 some way to do this.

13 I question the wisdom of doing this open-ended, relying
14 only upon the maximum capacity of the plant at the outside
15 limit, number one.

16 Secondly, I don't see anything built in to this that will
17 allow EPA or any other utility company seriously question an
18 alternative strategy by this one. I think they will all look
19 at this one and or with it.

20 I would like to see built into something that pushes a
21 number of them to go shorter way, where some of them take
22 advantage of the full extent. I don't know what that is. But
23 we have done that it will be built in the bill by having a
24 proof of some type of method which means that to translate and
25 make ways to do it just out the door with some. Some the question

to go the other way rather than the other way.

Q Now's that another thing that someone can build into something, but I think the question is really that someone, they are going to go the other way. I would like to see we build into something that might force some of them to go another route.

Q Can I ask a question of your staff now?

A The one that has not been, well, the one that you are aware of factually what are their alternatives and what are they considering right now? With the state of the law before Senator Baker had described, what are they looking at?

A Mr. Ward, their strategies have been considered at that point. If the one that would be considered in our amendment were adopted by you like described, they would use a moderate sulfur level in addition to the sulfur to meet that condition were met. If our amendment does not apply to that plant, the TVA has not been reasonably supposed under the existing law that they would be allowed any increase within four or five years.

Q TVA has proposed to the power a new gas desulfurization system which their estimates indicate the cost on an annual basis is \$55.1 million. The reason the TVA is considering phasing the plant out is because the total investment would be at least \$100 million, and \$55.1 million would be a very high cost for the investment.

A I believe the correct figure is \$100 million.

1 substantially less than it reported. It is operating at less
2 than 50 percent of what it is designed to produce. So that is
3 the reason.

4 Senator Overton: Thank you.

5 Senator Baker: Mr. Chairman, I am willing to accept the
6 modification of the amendment to put compliance date at 1990 or
7 1992 as the construction effective date if that will help any.

8 Mr. Chairman, I am willing to amend my amendment, if I may
9 to put the effective time of this amendment to be 1990.

10 Senator Randolph: I am sorry.

11 Senator Baker: I have just amended my amendment to provide
12 for an expiration date of 1991.

13 Senator Randolph: Just a moment. Who had suggested that
14 or was it the initiative of Senator Wallop?

15 Senator Baker: Senator Wallop.

16 Senator Randolph: I remember that was a problem with you.
17 Is this correct?

18 Senator Wallop: It is not on the agenda.

19 Senator Randolph: There is a problem with me, however, as
20 I attempted to discuss this amendment. That is the use of the
21 word "and" in the amendment. I initially understood that
22 stands. That is a decision that a state or someone else
23 would have control to what I intend to.

24 But the word "and" was used that if it is included in some
25 form and something, they would have to be permitted.

unacceptable the minimum viable production program. This is not an important distinction, I am sure. I am the only member of Congress working this who has been asked if we cannot find a way for it and amongst the width of most of the industry does on in cases, including the United Mine Workers who felt that that is because we're away the mining of coal and the Economic Policy Authority with the hydroelectric program.

Of course I am speaking for TVA because they want to go into the atomic field too much. I think they ought to be working with our coal a little more, Howard and I have a constant discussion on that.

I do not want to quarrel -- I return to you, Howard -- on that word "new."

Senator Tower. I don't have any problems with that. The only question I would want to make to have clarification, Mr. Chairman, would be when we speak of existing stocks we are talking about stocks that have already been built. I am thinking of the case where the stocks have been built and are not yet in service but they have been built.

As long as we understand what we are speaking of those that are already in the air, even though they are not yet in service. I have no objection to writing the word "new." It would read, "Start height of existing stocks not be taken into account."

Senator Pennington. Yes, I think it is certainly not a new proposal for your committee. I think it is within.

Senator Baker: Mr. Chairman, I would be asking my second
 question.

Senator Baker: Now this merged the plants with the
 idea of this investment banking or what?

Senator Baker: No. The whole thing was built with a plan and
 then brought out and sold the plan was what they started.

Senator Baker: That was a different policy than

Senator Baker: And the political line on both those and
 on each. This strategy and then the next was that EPA did not
 have their authority. That is what he was in this dilemma.

Senator Baker: That's right, what to do about the
 other two courts have held. My understanding is that the courts
 have upheld EPA throughout this time. If I am wrong, I want
 to be corrected.

Senator Baker: Yes, right with footnotes, I am following
 that you could keep a diversified program with all stocks. EPA
 then changed their program.

Yes, please. They got out and they got back.

Senator Baker: And is that what

Mr. Chairman: EPA was asked to interview what Senator
 Baker said before and what was said in that stock policy. EPA
 approved legislation that was the stock and this legislation
 was then that would be the program and they got used to
 the environmental program and the EPA was the program that
 helped out and it was a good thing. Senator Baker: Yes, yes

1 Initial report was re: 100% hairpin.

2 Operator advised: Has the full report been received in
3 the Bureau?

4 Mr. Holloman: Yes.

5 Operator advised: Give us the name of the case.

6 Mr. Holloman: The Georgia case. We will supply it to you.

7 (The information to be furnished follows.)

8 CONFIDENTIAL CASE

Mr. Smith: It is now before the Federal Circuit Court of Appeals. I have a citation upon it.

Mr. Williams: The National Resources Defense Council versus the Environmental Protection Agency. I believe it was in the Fifth Circuit case against the State of Georgia's log-scuttling plan. What was said then?

Mr. Smith: The decision was rendered February 18, 1974. There is a sixth circuit case that was decided last year involving the Secondary State Implementation plan, was any holding?

Mr. Smith: There have been three circuit court opinions and one Supreme Court opinion, all of which went against tail attacks.

Senator Dole: Would Senator Baker clarify the status of his amendment now?

Senator Baker: The scope of the amendment is that it applies only to existing attacks. Sections means those that are in effect or necessarily those that are in operation. And the amendment is further amended to provide that it won't be effective after January 1st, 1981.

Senator Smith: I mean, what happened to a pilot operating in 1971, with tail attack?

Senator Baker: They are going to have to stick their noses in the ground and not go anywhere as long as it comes.

Senator Dole: Are you serious?

Senator Baker. No, Chairman. I have assumed my amendment
 as written and it may apply to existing stocks. The amend-
 ment now reads: "Provided that in consideration of the
 legislation for increased steam electric generation units which
 commenced operation before July 1st, 1937, the effect of the
 entire exact height of existing stocks may be taken into
 account and provided further that this amendment shall have no
 force or effect after January 1st, 1938."

Senator Randolph. Is there any question in the reading of
 the amendment? We will proceed to vote.

Mr. Yeager. Senator Anderson.

Senator Anderson. No.

Mr. Yeager. Senator Baker.

Senator Baker. Yes.

Mr. Yeager. Senator Benson.

Senator Benson. (No response.)

Mr. Yeager. Senator Burdick.

Senator Burdick. No.

Mr. Yeager. Senator Chafes.

Senator Chafes. No.

Mr. Yeager. Senator Fulton.

Senator Fulton. No, or never.

Mr. Yeager. Senator Goodrich.

Senator Goodrich. Yes.

Mr. Yeager. Senator Howell.

1 Senator Randolph, the 13 motion.

2 Mr. Yeager: Senator Davis.

3 Senator Davis: Yes.

4 Mr. Yeager: Senator Anderson.

5 Senator Baker: Yes to today.

6 Mr. Yeager: Senator Perkins.

7 Senator Dotti: No by yeas.

8 Mr. Yeager: Senator Stafford.

9 Senator Stafford: (No response.)

10 Mr. Yeager: Senator Hallen.

11 Senator Randolph: Yes by yeas.

12 Mr. Yeager: Senator Randolph.

13 Senator Randolph: Yes.

14 Mr. Yeager: The motion fails by 2 vote of five to eight.

15 Senator Randolph: That is a fine opportunity for other
16 members, as always, who would want to vote. There are two
17 unrecorded votes. It is 1 of eight. The Chair is ready to
18 conduct it; it is your desire. We are to meet on 1980 this
19 afternoon.

20 To there no members that is ready the offering as is it
21 your desire to proceed until 1980? I would have an amendment
22 myself, but I want to accommodate members.

23 Senator Hallen: Mr. Chairman, I have it today. I have
24 another amendment. I have for June 25, 1980. I am not
25 interested to come back at 1980.

1 Senator Populiste: Yes, as I said, I am ready, of course,
2 to discuss my amendment, but of course I am not, as I
3 indicated without further delay, I wanted to do it. If we could
4 have five or six weeks here, I would like for us to proceed,
5 if that is agreeable. Therefore my bill is introduced possibly.

6 (In relation to funds.)

7 Senator Hammond: Thank you.

8 Phil: Will you give me a minute? He realizes that there
9 are more stringent air pollution standards in some States than
10 in other States. What, of course, is not to indicate that the
11 Federal law is not in every instance stricter than a State pro-
12 vision. He says: Well -- I think it has been successful -- to
13 give the opportunity, where possible, to the State or States to
14 place into the body of their law on pollution matters what they
15 feel is responsible to the needs of the people within that State.

16 I also feel that the amendment is varying, as I have
17 studied the reasons for rejecting this amendment, at least in
18 part.

19 I call your attention to the substance of the amendment.
20 That is that it would provide a means or illustrate the impact of
21 emissions from the States on which -- I may be incorrect but
22 not powerful -- only in place -- illustrations.

23 The amendment directly related to West Virginia which, as
24 the record shows, the Federal Government has been enforcing in
25 the State of Ohio, but unfortunately has never enforced in

1 ...the permit about two months. First, the standards
 2 from Ohio are applied over the Ohio-Alabama line and Virginia,
 3 regarding per acre pollution control standards. I must call you
 4 by the very name of the State concerned, it is precisely
 5 never a question where east plays west, West comes west. That
 6 is an actual fact.

7 In the emissions from Ohio, coming across the river into
 8 West Virginia, reduce those standards in West Virginia which are
 9 higher than the Federal standards -- the State of West Virginia,
 10 having brought those higher standards into being.

11 To the second consideration, I must state like West
 12 Virginia, having strict standards, have an economic disadvantage
 13 in competition with our neighbors. In this instance, with Ohio.

14 The amendment that I offer -- I am not sure that it would
 15 not be perhaps strengthened or improved in a language change --
 16 is an attempt to equalize what I do understand, pollution
 17 between the States.

18 I want to announce, if I can, the equality. I would ask a
 19 member of the staff to perhaps do a more detailed discussion of
 20 the process of the amendment. This.

21 Mr. Chairman, you, as you said, it goes across to this
 22 problem of such widespread standards and some agreement among
 23 east in one way than the other. The other aspect of this is
 24 the fact that Ohio's standards of enforcement are the last and
 25 the political consequences are not well understood country.

1 take on to be followed by West Virginia in order to attain the
2 ambient standards.

3 The big title amendment is (7)(B), it is an amendment to
4 Section 109, the implementation plan (provision); it follows
5 provisions that are in the Clean Air Act in very close to what
6 recommended by the National Association of Governors and the
7 Governor of West Virginia.

8 Governor Randolph: Yes, I did want to stress that the
9 Governors Conference and Governor Association of the State of
10 West Virginia are believers in the purpose of the amendment and
11 have no objection to me and filed for the record. If you will con-
12 tinue.

13 Mr. Jennings: It would require that every State implementa-
14 tion plan prohibit any source within that State from emitting
15 air pollutants which would either violate the ambient air
16 standards in another State, interfere with the control of
17 deterioration requirements in another State or otherwise
18 endanger the health or welfare of the citizens of the other
19 State. That is necessary for nonattainment pollutants such as
20 ozone and other difficult problems that do cross State lines
21 but go beyond the basic objective in the Act.

22 It provides that basic requirements as part of the imple-
23 mentation plans and then provides that States to implement
24 that.

25 (Witness, that for every new source within any of that level

is another State, whether action is needed should be given.

Secondly, if it is necessary to all the existing evidence in a State which may be used in another State.

Third, which is probably the most important, it authorizes any agency or individual administrative charged to petition an administrator for a finding that a State's course would be a course which would protect this Government, which would cause it to be provided in another State.

The administrator in that case would have to make such a finding or finding two petitions and at that point you would have a ruling from the Federal authority, essentially a Federal arbiter, who would be deciding whether or not the petition in one State would have such an impact on the other.

It is noted that decision, if it made such a finding, the petition in the host State could be abated just as if it were a violation of that host State's legislation plan.

Senator Charles. Are we going to say

Mr. Chairman: The administration of the

Senator Hamilton. That is the process procedure.

Mr. Chairman: The effect of that is that the statute that the Senate have enacted, it is a particular piece in 1916 was enacted which was dealing with the subject standards or whether otherwise is Governmental rule, prohibition, since the State of Ohio is considered as having the same or most similar of these conditions.

Senator Chafee: You mean that it is a new plant they are going to build?

Mr. Hollings: I am silent on an ongoing effort.

Senator Chafee: How can you pin it on one plant?

Mr. Hollings: I don't think you can, actually. In the West Virginia-Ohio case it is a general pattern of regulation, a general pattern of all the electric generating plants. For example, all the sulfur oxide measures.

Senator Hollings: I think we ought to add at this point a reality. West Virginia is across the Philadelphia office. Ohio is under the Richmond office. Frankly, the interpretation I have said here, is that there is a variance. We find that, let us say, they are doing better with Chicago than we are with Philadelphia.

Gary.

Senator Hatch: Mr. Hollings, I think this is not only an important link. In my judgment it is a necessary one, if for nothing else, to prevent economic piracy between the States. I think it is extremely important to produce the States that have taken a lead and enacted machinery air quality control standards. I certainly support it.

Senator Hollings: Thank you very much.

Senator Chafee: Mr. Chairman, once I'd a new State in this so I am very enthusiastic about this.

Senator Hollings: Mr. Chairman, I am very enthusiastic

members of my friend's family and a few members of our air-
 force. I would like to have dinner with you on
 that occasion.

Senator Nelson: I have some matters to discuss with
 you that are in effect streamlining the typing
 industry at the expense of -- (inaudible)

Senator Randolph: I want you to know that if we could have
 this assembly, which I feel is the backbone of the bringing
 equality, it will make all of us, including me, very happy.

Are you ready to start?

Mr. Vago: Senator Anderson.

Senator Anderson: Yes.

Mr. Vago: Senator Baker.

Senator Baker: (No response.)

Mr. Vago: Senator Bennett.

Senator Bennett: (No response.)

Mr. Vago: Senator Burdick.

Senator Burdick: Yes by proxy.

Mr. Vago: Senator Carlson.

Senator Carlson: Yes.

Mr. Vago: Senator Chafee.

Senator Chafee: Yes by proxy.

Mr. Vago: Senator Connally.

Senator Connally: (No response.)

Mr. Vago: Senator Curtis.

1 Senator Randolph: Aye by proxy.

2 Mr. Vago: Senator Welch.

3 Senator Vago: Aye.

4 Mr. Vago: Senator McMillen.

5 Senator McMillen: (No response.)

6 Mr. Vago: Senator McNichols.

7 Senator McNichols: (No response.)

8 Mr. Vago: Senator Thistle.

9 Senator Thistle: Aye by proxy.

10 Mr. Vago: Senator Stafford.

11 Senator Stafford: Aye by proxy.

12 Mr. Vago: Senator Wallop.

13 Senator Wallop: Aye.

14 Mr. Vago: Senator Randolph.

15 Senator Randolph: Aye.

16 Mr. Vago: As is usual, is it so nothing.

17 Senator Randolph: Yes, no objection.

18 Is there an amendment from some other member who wish to
19 object? I will be glad to proceed to hear it.

20 Mr. Dingus: I was going to suggest item 14 on the
21 agenda, Senator. I don't believe there is any controversy
22 about that. That is the question of the railroads.

23 Senator Randolph: Thank you, let us move over.

24 In the first before us, will read the resolution that would
25 be stricken under the proposed amendment.

Mr. Chairman. Senator, does that not mean we are voting
the time to pass the entire bill? It appears on page 77.

Senator Randolph. Your vote on the railroad will decide
nothing.

Mr. Chairman. Section 31 of the Bill, as approved last
time, extends on page 78 and through the last 2 lines of page 80,
to the last Congress. The railroad inquiry indicated to the
committee the desirability of having a Federal regulation of
emissions from railroads.

Senator Randolph. But the omnibus?

Mr. Chairman. Yes, for locomotive engines and secondary
power sources on railroad stock. This would be regulation not
only of locomotives but also regulation of emissions in use in
interstate commerce.

Senator Randolph. Is it true that, since the Act of 1947
year, substantial disagreement has developed between EPA and
the railroad over a similar provision in the same context
and?

Mr. Chairman. Yes, that is correct.

Senator Randolph. There is no feeling here that these
are matters confined to administrative and court proceedings.
Is that true?

Mr. Chairman. Yes. The railroad industry indicated to us
that they were the polluted source of the smoke problem in
the last Congress. They are not any more than it is.

appropriate to the same purpose will pending in administrative
 processes and in the courts. It particularly belated to the
 question of the transference of the effect of this legislation upon State
 and local regulations.

A similar provision in the Water Control Act is still being
 worked in and will be effect will be. In the absence of
 certainty about that, they are recommending that we not include
 this provision at this time.

Senator Vandenberg: Are there questions of amendment?

Senator Cramer: Mr. Chairman, I personally find this so
 complicated that I have not managed to get up this far, so I am
 not going to vote on this matter now.

Senator Wallace: Mr. Chairman, it just does seem that,
 despite the problems and other things, now it ought to be a part
 of this Act.

With regard to the amendment that the chairman just
 offered, it seems as one State offends pollution to another
 and the immediate transmission of pollution. It would seem to be
 a problem everywhere we read.

Senator Tamm: I am sure there is no grilling out of the
 limits of the industry. Something on this matter -- I was not
 using this word "byproduct," about a later matter of power. But I
 rather every word of this.

Mr. Chairman: In the course of this discussion it would
 also be possible to get relief from and remove amendments to

1 important contributor to violations of the Act.
 2 Section 110(d). However other subjects of the Act
 3 Mr. Cummings. Under the current law, under Section 110,
 4 implementation plans need to be developed to reduce whatever
 5 emissions are major contributors or levels in excess of the
 6 standards. If, for example, in a given area, railroad emissions
 7 were a problem, implementation plans to control those emissions
 8 would be necessary and still could be adopted, for example, in
 9 yard operations or other things, even in the absence of this
 10 amendment under State action plans.

11 Senator Randolph. Did you hear that?

12 Senator Bailey. I did, yes. I am perfectly willing to
 13 concede that there are complications involved in it, but I
 14 wonder if you should strike the word as well. Wouldn't it be
 15 well to retain the word?

16 Mr. Cummings. That would be subsection 225 (a)(1).

17 Senator Bailey. Is (a)(1) over on page?

18 Senator Randolph. I think that you are saying, Senator
 19 Bailey, is that we are developing those plans, they would be
 20 available to us at a later period, not a long time, but we would
 21 have that basis. We didn't have that, of course, last year. I
 22 readily agree to that. In fact, I think it is necessary.

23 Mr. Cummings. Bailey suggests that, rather than just be
 24 limited to (a)(1), that the text continue on through line 7 on
 25 page 19, so that not only would the phrase be continued but

1 this can really would be eliminated.

2 Senator Randolph. What is that?

3 Mr. Chandler. And it would be important to be sure it
4 would be transmitted to the committee.

5 Senator Randolph. That is necessary, of course. That is
6 what I want inserted in provision that the amendment

7 Senator Mallon. I would be disposed to vote on it with
8 that too.

9 Senator Randolph. You are disposed to vote on it?

10 Senator Mallon. Yes.

11 Senator Randolph. Did he do it? voice vote?

12 Senator Mallon. Where are we right now? Could we operate
13 the union with the amendment?

14 Senator Randolph. Yes. I will ask that to be done.

15 Mr. Chandler. The action would be to delete all of the
16 provisions dealing with operation of railroad locomotive
17 engines (see line 1 of page 7) except line 2 of page 7 so
18 that the only provision dealing with railroad locomotive
19 engines would be a vote to be reported back to the
20 Congress (see page 7 line 1 of page 7).

21 Senator Randolph. Yes, correct, isn't it?

22 Mr. Chandler. Yes, correct, yes.

23 Senator Randolph. We will do that. Would he like to
24 have a roll call on it? Mr. Chandler is in position to approach.

25 Senator Chandler. Mr. Chandler is in position to move this

1 afternoon -- as I understand it.

2 Senator Randolph: Yes.

3 Senator Thomas: I could tell us how many I will. I
4 would be pleased to vote one way or the other than.

5 Senator Randolph: And here this afternoon?

6 Senator Thomas: Yes.

7 Senator Randolph: Fine, just as soon as we pass
8 the staff have my comments.

9 Mr. Phillips, Mr. Chairman, on item number 12, the so-
10 called fuel additive amendment, when the committee first began
11 to go through the legislation and discussed its provisions and
12 possible amendments, the staff discussed a problem which had
13 arisen since last year with respect to changes in the additive
14 or fuels which are used in motor vehicles with catalytic
15 converters.

16 The 1975 and subsequent year of cars are required to use
17 unleaded gasoline. The reason that cars are required to use
18 unleaded gasoline is because leaded gasoline destroys the
19 catalytic converters.

20 These cars were certified in compliance with emission
21 limitations on the basis of a modified fuel, which is basically
22 referred to as heavy duty fuel or Ford without additives.

23 In the interim period, subsequent to that time, a new fuel
24 additive had been added to the unleaded pump fuel, something
25 called MTBE. Now is not what is really important, what is
26 important is that there is a consensus as to that that one not

1 is impossible, that fuel which you do waste for certification
2 of compliance with emission standards can be charged without
3 any further tax levies. In addition, by substituting diesel oil for
4 kerosene in those fuel systems, by the addition of diesel
5 fuel systems will reduce the pollution system of the cars on
6 the road.

7 The problem that is discussed would be two things. First,
8 it would prevent the introduction of a new fuel additive with
9 out prior approval of the Environmental Protection Agency to
10 determine that it wouldn't interfere with emission systems.
11 That would take care of the immediate.

12 Secondly, the question would conflict with the 1975 fuel
13 control law of my fuel additive which was added to the
14 clear fuel for the certification fuel subsequent to 1975 until
15 the demonstration had been made that these fuels do not inter-
16 fere with the performance of emission systems.

17 The purpose of the committee is to provide a means to
18 protect the investment in the about 2,150 million pounds
19 worth in the vehicles on the road. We have 10 million cars and
20 over that is 10 million. We have a third and a half billion
21 public safety investment in the vehicle control systems which
22 are at risk of being damaged by the introduction of an additive
23 about which people know very little.

24 It is concluded by some that that addition does not damage
25 the system and it is concluded by others that it does damage the

system.

On reason the staff person -- he committee consider this argument is because the staff should be minimized so that investment regulation controls and conduct controls not be jeopardized by these activities without first knowing what they are going to do.

Senator CHASE. Is there anything in there to require that the administration reach a decision in a certain time?

Mr. MILLER. No.

Senator CHASE. I think the problem with these things is that the bureaucracy gets involved and won't fish or cut bait. I think there ought to be something in there that if they don't decide negatively by a certain time that it is presumed that they are given some commission.

Mr. CUMMINGS. This is in the consideration rule area.

Senator CHASE. I don't know what that means.

Mr. CUMMINGS. In the case where you are talking about the introduction of something, would that also apply to an application for waiver of the prohibition here in (d) (2)?

Senator MILLER. I disagree with you. I think it ought to apply to everything the Federal Government does, but they ought to be given a certain planning period of time. If they don't make a decision, the answer is yes, because it takes years to get anything out of the Federal bureaucracy in any area -- transportation, housing, et cetera. You never get an answer.

Senator Chiles says that there should be some kind of final law about it is settled yet we no, and I couldn't agree with his words.

Senator Holloman. I see how it affects the burden of proof. It doesn't say who should have the burden of proof. The reasonable time requirement, I think, is a naive suggestion.

Mr. Newman. I wasn't attempting to address that. I was attempting to raise the problem that happens if in the interim, before you have a final verdict in decision. Should WWT be allowed to continue in the fuel during this six-month or one year period, or should WWT not continue in the fuel during this six-month or one year period. I was just trying to raise this other issue, which I don't think had really been raised.

Senator Mallot. But it merely illustrates the point we are going back to 1975 and says we are two years and some months later and there has been no decision that WWT was in there prior to that.

Mr. Holloman. Senator, may I just begin with it very briefly. You mentioned how not yet done to use it.

Senator Mallot. Is that because of a manufacturing problem?

Mr. Holloman. Yes. It was possible to do what the EPA wanted or recommended. There was some delay in EPA's action. EPA did not order that WWT not continue and later it withdrew the restriction. EPA continued the suspension.

regards to the introduction of additives to fuel, we have had
 extensive meetings with the EPA and the method of regulation
 systems.

So we are at risk because if they - one of the law - I
 think it is probably a perfect one - that, while the world
 sort of have 100% of any other additive removed from fuel on the
 basis of gas car pollution control systems, they didn't opt to
 have that removed on the basis of the rest of the rest.

I didn't want to be positive, but we have told the American
 public that if they use this colored fuel which is not there
 in the gas stations now, that their cars -- those catalytic
 converters -- will mistake for the useful life of their vehicles.

Now, I would like an independent decision on the part of the
 oil companies with or without or without for approval from
 EPA or not this additional additive, there are increasing the
 risk -- and I am not positive which way it will go -- that these
 systems will be either harmed or destroyed.

Senator Baucus. For your information -- I passed it to
 different people that which was submitted to us -- and in it we
 do have been known. It does have evidence of -- some legislative
 edited article that was provided. It is just the same thing as
 certain -- certainly in Congress. It just seems a policy of
 gasoline to further. As a time when we are running out of gas
 then the time (read or heard) have passed from these things
 can be somewhat known the various articles of the Congress.

1 I think that the fact that the law is not as good as it is
 2 should be a consideration.
 3 In addition, however,
 4 the fact that it is a good example of the way in which
 5 Gallup's comment. But in addition to the problems may be
 6 also the fact that it was originally written in 1978. That section
 7 21. (b) (2) says, "For the purpose of regulation of food and
 8 feed additives, the Administrator may also require the manu-
 9 facturer to be certain things."

10 Therefore it is a permissive thing. As a practical matter
 11 he submits information and he does submit and does it. The
 12 manufacturer submits information and does the additive subject
 13 the Administrator calls him out to. Whether that is the
 14 proper way to proceed or not, I don't know.

15 I say, I think there is any indication that the
 16 company or Royal Corporation, the maker of MAF, had violated
 17 the intent of the 1978 Act. It is a registered additive and has
 18 been used in small quantities up until the last year or so for 10
 19 years or more.

20 Speaker Waller. It is not a. I don't see anything like
 21 that here in.

22 Speaker Chaser. Well, what we are talking about here the
 23 issue of food, whether we get the 200 animals fixed or not
 24 and it under the program has been used and there have been
 25 hundreds of them. It is a good thing and get it fixed. All of that.

1 saying it was essential. They have got to make a decision.

2 That question is what do you do about problems that have
3 already been raised. I don't think we can say well that all the
4 market will be given that work will.

5 Mr. Chairman, it would depend upon the time that you give
6 me for a reaction under your proposed amendment. There are
7 three could be considered. If you look at paragraph (d) of
8 this amendment, it indicates that "I feel which would otherwise
9 violate this would have an on taken at the earliest within 30
10 days after enactment."

11 But there is an opportunity right (c) for waiver. If the
12 risk in which the waiver would need to be considered by EPP
13 expired ahead of the time at which it would have to be taken
14 off the market, it would not have that disruptive effect. You
15 would have not making the decision beforehand.

16 I don't know how long you had in mind when you indicated
17 that a decision should be made within a stated time.

18 Senator Chafee. I don't know how long either.

19 Mr. Chairman, if those two issues were considered you
20 would not have that reaction.

21 Senator Chafee. I am open to suggestions on how long
22 that time would period, and say how long, to make this positive of
23 a decision.

24 Senator Aspinwall. We don't like that because we
25 language and because it is in the amendment.

Senator Chafee: But will you give us how close it will
come to being a monopoly?

Senator Mallon: And even so it is best.

(Laughter.)

Senator Chafee: Let me ask you another question.

Doesn't it seem when you say "any emission product will
not contribute to endangering the public health" isn't that
a pretty broad statement? Everything really endangers public
health to some degree. I think that is pretty broad language.

Mr. Cummings: Senator, Section 311 of the existing law
has that as the basic test for regulation of fuel additives.
There are two things. One is whether the material will impair
the performance of an emission control device. That is the
basis on which lead-free gasoline had to be provided, for
example.

The other test is whether emission products of the fuel
or fuel additive will endanger the public health or welfare.
It is on the basis of that that the lead phased-out regula-
tions were based, for example.

While it is an example of best test language, the basis of the
existing Section 311.

Senator Mallon: I think one of the things you test
concluded there is one of the problems with the way this legisla-
tion is drafted. That is that you are not going to have the
Senate and Congress feel that they are going to have the

1 further down the road with the refinery capabilities. It is
 2 not the business you are going to have but the large business
 3 Mr. Killam. The business is going to be a large business
 4 and I think you are going to have a large business
 5 to carry in order that the additional refinery capacity can
 6 be added.

7 In terms of the way they were originally framed, I think
 8 that statement is correct, but when the new time schedule that
 9 was outlined for the agency for last phase-down I think the
 10 practical effort on road commences you indicated.

11 I think we'll go. It really isn't hard. We have very small
 12 refineries in operation. We have four small refineries. The main
 13 part of it is that, unless something like this can exist and
 14 unless it can be proved to be harmful, that phase in here I
 15 think we ought to figure out how long it is going to take to
 16 prove that this is harmful or not harmful and put that into the
 17 act and get rid of the 30 days.

18 If it is more or more than 30 days, it is in the act. I
 19 think that ought to be the guiding factor and not the others.

20 Do you think the act can be amended to this effect as to
 21 the 30 days?

22 Mr. Killam. Let me read you a place that is better than
 23 the other words possible is that phase-down is adequate.

24 The act is inadequate, it is the act saying that someone
 25 already with the ability to make it a phase-down is the act

be generated or not required by under Section 312 (a) of the Clean Air Act, would not action or necessary, however, the length of time required for such a study -- we estimated that the technical work alone would require a year and then the rule making process will take a substantial additional time -- makes it unlikely that prompt action may be taken under Section 311."

Then they go on to say, "the preponderance of the evidence of this time suggests that we will be incompatible with existing emission control systems. Further studies we plan are expected to settle this matter in a definitive manner, but it will take a good deal of time or money."

So let me assume that with regard to the technical studies, if the burden is on EPA to demonstrate this is harmful to existing emission systems, let us assume that they go on their technical work in a year and that they promulgate regulations requiring the removal of SO₂ and if we take for a comparative purpose the amount of time of the lead regulations, we are reasonably willing about those issues.

To those years you will have another 16 million tons of the SO₂, the emissions that could very have been prevented or partially limited by the EPA.

Obviously, if EPA's technical staff agree that SO₂ isn't harmful, then nothing is there.

Now, Mr. Nelson, I thought with you the public opinion is

1 lost. You are talking about the fact that we are in an
2 energy crisis. About 20 percent now, I think I would just still
3 be that that otherwise would have been the case for other similar
4 year period. There is another loss of defense against what
5 you are talking about.

6 It seems to me that there is no reason that you can't
7 hold corporations responsible for the effects of additives that
8 they put out on our market. It would be silly, if it were
9 proven that it would be harmful.

10 Mr. Billings. But you can't recover that. The cars are
11 on the road. They are on the road for 10 to 15 years. If that
12 catalyst system is permanently damaged, you have set back the
13 air pollution control effort by some considerable degree, which
14 I think is a bad to be weighed.

15 Senator Mallory. But one thing is certain. If we take
16 this action we will have 30 percent more fuel at least, maybe
17 more, which is a hell of a lot of not only extra national
18 product that is exported to the middle West in terms of balance
19 of payments and everything, we have 150 catalytic converters.

20 Mr. Billings. I haven't seen the 20 percent figure, but I
21 suspect that is based on the use of lead in the oil or what? Is it
22 to the extent of that that today that is the case now? Is
23 gasoline its octane number is about 20 percent?

24 Senator Mallory. It would be to get the idea that is really
25 distorted. Right now I think it is lead or not it is back lead

then that. But is this way to come on line as an executive —
 Mr. Williams, on the other, he creates a liability on the
 very of the oil community to reduce all of the possibility in
 solution problems in solution were it movement in this period
 at this it is found that and is harmful?

Senator Stafford. I think if they had any indication that
 was going to take place, the decision to use or not use MDT
 would be pretty clear.

Senator Stafford. We think would forgive, if you would
 care to continue the discussion, we will stay on it. If not,
 we have to wait until 3:30. If you want to move on another
 subject, we can see if we have anything of a noncontroversial
 nature to discuss that is on the agenda.

Mr. Williams. There is nothing of a noncontroversial
 nature on the agenda.

Senator Stafford. In that case we might to consider
 adjournment.

Mr. Williams. Or at least recess.

Senator Stafford. The panel will conduct the committee
 is in recess until 3:30.

Discussion at 3:30 p.m. The committee recessed, to
 reconvene at 3:30 p.m., the same day.

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[The committee reconvened at 1:53 p.m., Senator Randolph presiding.]

Senator Randolph. We are grateful for the members who have returned and others making phone calls to the conference room and will be here.

We will begin the afternoon session. And I am not sure, John, whether you, Gene, will bring us up to the point where we concluded? Would you go back to the amendment that was discussed that I offered in reference to the rule from the standpoint of omission?

Mr. Cummings. The amendment would eliminate from the bill the regulations dealing with railroad locomotive emissions, leaving the part of the bill text which requires a studies investigation of those emissions and report back to Congress.

Senator Randolph. Within nine months?

Mr. Cummings. It would be page 77. Yes, the report would be required within nine months after enactment. Page 77 through 83 of the bill.

Senator Wicker. We are eliminating 77 to 83?

Mr. Cummings. The amendment is, "Delete line 1 at page 80. There would be three modifications to the top of line 7, page 78, to require that the report be submitted on three occasions."

Senator Murkin: The economic bill will be established
 almost further legislation.

Mr. Chairman: Yes, sir. That is right. But the
 assembly this legislation is needed in the next few months,
 the other would be expected to be passed during this Congress,
 sometime next year.

Senator Randolph: Personally, oh, if it would help you --
 and I am not saying it would -- if there is anyone, I would
 be very glad to modify the bill before it comes to six months. I
 just wanted the story to indicate the fact that I think we
 need it we had some last year.

Senator Murkin: Can we get a meaningful study within
 the time frame?

Mr. Chairman: I think we could. That the study will
 be to give us some idea of the extent to which railroad
 railroads are a problem and the technological feasibility
 of control. I think we could get an assessment of both of
 these within six or nine months.

Senator Murkin: Now the legislative branch recommendations

Mr. Chairman: Yes, sir. And also, Senator, I would
 like to know the extent to which the study will
 be able to help us in the future and the possibility of
 control of the railroads and the possibility of
 control of the railroads and the possibility of
 control of the railroads and the possibility of

Senator Murkin: Yes. I am interested in the possibility
 of control of the railroads and the possibility of

1 Senator Muskie: The study would also include whatever
2 information there is on the state of the art that is
3 available.

4 Mr. Chairman, yes, that would be part of the study.

5 Senator Muskie: So with a six-month study --

6 Senator Randolph: That would be agreeable with me.

7 Senator Muskie: -- mandating recommendations to include
8 technology art and so on.

9 Senator Randolph: I hope we can give our approval.

10 Senator Muskie: The only reservation is if you had
11 legislation it more or less would have to stand on its
12 own. It wouldn't be part of the broader legislation.

13 I have no particular objection.

14 Senator Randolph: I think it is a reasonable request
15 and that is the reason for offering the amendment. We
16 are making a determination within a few months. There are
17 certain materials that are available now, though, and I
18 would not recommend to extend the six months to
19 six months with the understanding that the matter Senator
20 Muskie has mentioned would be included and that the state
21 of the art certainly be included.

22 Senator Muskie: I have no objection.

23 Senator Randolph: I wonder, Mr. Chairman, if we could
24 add purpose to that study. That are not in interstate
25 commerce and turn the ownership of that in the locomotives.

of regulatory bill matter.

Senator Mankie: I agree with you.

Mr. Hollings: There is a constant one existing in California where they are finding a major source of hydrocarbon emissions associated with vessels coming in and out of the harbor, and they are increasingly concerned with the addition of the Trans-Alaska Pipeline off the coast of the Los Angeles basin. The issue is whether or not we will be prevented from regulating these vessels by the fact these vessels are in interstate commerce.

Senator Mankie: I suppose we ought to include oil lifts.

Senator Stafford: Only those in Maine.

Senator Mankie: You can include them in New Jersey if you give the large amendment.

Senator Stafford: Mr. Chairman, do I understand we are about to vote.

Senator Mankie: By amendment.

Senator Stafford: What is section 234, and everything that is attached after the word "back story" on page 75 of the committee print?

Mr. Hollings: Sec. 234: (b) incorporate the modifications proposed already.

Senator Stafford: When I am ready to vote, Mr. Chairman.

Senator Mankie: We will call the roll.

Mr. Hollings: Senator Mankie?

1 Senator Anderson. Yes.

2 Mr. Tago. Senator Baker?

3 [No response.]

4 Mr. Tago. Senator Benson?

5 [No response.]

6 Mr. Tago. Senator Carlisle?

7 [No response.]

8 Mr. Tago. Senator Chaffee?

9 Senator Chaffee. Yes.

10 Mr. Tago. Senator Culver?

11 [No response.]

12 Mr. Tago. Senator Davenport?

13 Senator Davenport. Yes.

14 Mr. Tago. Senator Howell?

15 Senator Howell. Yes; by proxy.

16 Mr. Tago. Senator Kent?

17 Senator Kent. Yes; by proxy.

18 Mr. Tago. Senator Williams?

19 [No response.]

20 Mr. Tago. Senator Wyllie?

21 Senator Wyllie. Yes; by proxy.

22 Mr. Tago. Senator Wylie?

23 Senator Wylie. Yes.

24 Mr. Tago. Senator Rutledge?

25 Senator Rutledge. Yes.

Mr. Yago. Senator Wallop?

(No response.)

Mr. Yago. Senator Randolph?

Senator Randolph. Aye.

Mr. Yago. The motion carries nine to nothing.

Senator Burdick. Aye.

Mr. Yago. Ten to nothing.

Senator Randolph. We are appreciative of the 10 to nothing of the members coming in, knowing of other commitments. And as much as we can, I know we will be here.

Are there amendments to be offered by other members?

Senator Domenici?

Senator Domenici. On our mark-up itinerary I would like to take up No. 8, which is called Waivers of Standards for New Sources. In Senate Bill 253, which is the conference bill we have agreed on, at least by the conference process, on page 22 of that bill we who were conferees adopted House language, which is found starting at line 14 and is called "Waiver for Technology Innovations."

And my proposal is a motion to include in our bill the exact same language that is in Senate Bill 253, the conference report regarding the same. So that when we go to the conference with the House this time we would have the same language that the House had in their bill.

The reason for this and the goal of this is to permit

new technology to be put on just new sources, and it does not waive primary, secondary. It is only permissive that the administrator can do it, and what it is saying is if in the building of a new plant, it takes a substantial period of time and some determination and experimentation to put this entire new technology on board, and that the administrator, if requested by the State, may grant a waiver during that construction and determination and put on time, and may grant a waiver from the new source performance standards.

That doesn't mean they are immune from putting off forever. Quite to the contrary, the administrator in the proposal will judge the application based on the period of time they need to put this on. It must be innovative, it must be new, and carries a significant risk taking by way of capital investment. It provides for breakthroughs.

In my particular case I have a situation in my State where brand-new technology is going to be applied on the third of a series of plants. This is going to ultimately cost about \$210 million. They need to do some demonstrating as they move along. This would permit EPA, if they saw fit, to let them open up, produce energy while being installed.

It is a waiver only for a period of time for which they were proving it up without any detriment to the environment, from what we can tell.

I would tell my fellow Senator in this particular case,

if this technology proves up we will have a 90-percent reduction, which is well above that required for new source performance, which is 28 percent in this particular pollutant, well above the State law, which is 78.

And the State of New Mexico wants to grant them this temporary variance. I think it is the kind of flexibility we ought to encourage if we want risk taking which carries with it a goal of 90-percent cleanup in sulphur emissions, which happens to be the one I am talking about.

I want everyone to understand we are not giving assurance to anyone they will qualify, but clarifying that the EPA administrator could step in with criteria set forth in the amendment, and if he saw fit, grant them that latitude to open up without all of the source technology on board, and they would set that ultimate date when they have to comply. And I think it is pushing new technology and encouraging risk taking which we like if we want to get this kind of technology on board.

As I said, for those interested in no significant deterioration, if this was granted in the case that I was talking about -- I don't know that it will be -- they will have proven that nondegradation and no significant deterioration for that technology. It will prove that out and do away with the sludge situation.

It is a brand-new kind of technology that would prove

that nondiscrimination can be a technological reality and be as clear as our common-sense requires.

So with that, Mr. Chairman, I now we adopt the same language that was in the conference report as part of our Senate bill.

Mr. Chairman: If I could add, one Democratic member comments on the in harmony with Section 5, subsection 1, which appears on page 11 of the Senate bill S. 791, which is the innovative technology provision. In both provisions you would have encouragement of new technologies that have not been proven before.

Senator Chafee: Peter, could I ask a question?

Senator D'Amico: Yes.

Senator Chafee: Suppose you build a plant and say you have a new technology which consists of solving a word every day? So, therefore, you get a patent for three years.

Senator D'Amico: I think, to answer your question, the reason that I would be especially interested in patents in this kind of thing is the very reason you ask. But we have not been successful in using new technology even without to do and the administration has to find a mechanism to deal with this kind of thing.

In the instance of my amendment, the proposed system would achieve a faster solution without the required

1 to be achieved under the standards of performance which
2 would otherwise apply, or at least the equivalent. The
3 owner has to demonstrate to the administrator that the
4 proposed system will not cause unreasonable risk and an
5 erroneous determination of failure made with respect to the
6 technological system.

7 I think inherent in my amendment is an objective finding
8 that it is a new technology.

9 Senator Chapin. This doesn't require the consent of
10 the Governor like 1897?

11 Senator Domenici. He must join in the request.

12 Senator Burdick. May I ask a question?

13 Senator Domenici. Yes.

14 Senator Burdick. Suppose that you have a power plant
15 and you incorporate this new technology. And suppose at
16 the end of three years, now, it fails miserably, it doesn't
17 work. What will the agency have to do, rebuild it?

18 Senator Domenici. Well, by understanding, clearly,
19 is that they would have to go to another technology and
20 come on board in total compliance. They would have to do
21 that.

22 Senator Burdick. That section would have to be proved
23 technical, or technical?

24 Senator Domenici. That is probably right. I am not
25 familiar whether there is a difference between technical

1 item to be perhaps deleted and go with another technology.

2 Mr. Jennings. If you are talking about the case in
3 your state, there proposed is essentially add-on technology.
4 The amendment is broader than that and it might require
5 replacement of the entire production unit.

6 But typically, you are talking about one type of add-on
7 control technology as opposed to another.

8 Senator Domenici. I think the last way to say it,
9 Senator, is part of their evaluating is whether they want to
10 take the risk of going with this new technology and would
11 obviously consider the economic implication of not working
12 because it is clear that they would have to return and
13 come on board and comply with best available other control
14 technology and meet the source performance standard.

15 This just permits them to experiment with new kinds
16 that might go beyond a technology that is now known.

17 Senator Burdick. My next question is it might have
18 a limited application because many companies might not want
19 to take a gamble.

20 Senator Domenici. That is very possible. In the
21 case I am describing, they are going to take that gamble.
22 They are hoping to take that multimillion dollar gamble because
23 they have confidence it is going to work and will have a
24 90-percent ability with low sulfur coal going in, which
25 is on their kind of corporate business a very good investment.

Senator Murkin. Yes.

Mr. Billings. Senator, at the last Congress when the Senate considered this conference report language there were a couple of serious errors the way the language was written. On page 26, there is a provision for derogation of the technological waivers. And it reads as follows:

"If a waiver for any source is terminated under -- we and so -- "the administrator shall grant an extension of the requirement of this section for such source for such period as may be necessary to comply with the applicable standards of performance." It says, "Such period shall not extend beyond the date of three years from the time such waiver is granted."

That language should read: "such period beyond the date of three years from the time the waiver is terminated."

And the next sentence, "An extension granted under this paragraph shall not exceed . . ." This paragraph specifically relates to the termination and to that extension. So that otherwise, it doesn't make much sense.

Senator Murkin. That language means a possible eight years?

Mr. Billings. Eight years from the time the waiver is granted. So if the advanced technology or the new technology doesn't work, then at the time the new source performance standards would be applied, that is correct.

There are a whole of other technical problems with the language, Senator Dymally. But I won't go into it at the moment. But there is another point I wanted to raise, and that is on this paragraph C at the bottom of page 14 and the top of page 25. This language appears, "After a waiver has been granted under this subsection with respect to a proposed technology system, no additional waiver may be granted with respect to such technology composition unless applicant demonstrates such a waiver is essential and that the previous waiver or waivers are not sufficient for such a purpose."

The implication is you can go on five years, and five years, and five years. And that is not consistent. You are talking about a one-time waiver to prove out a system, not a series.

Senator Dymally: Mr. Chairman, I borrowed their language because it went in the general direction that I wanted. I certainly don't want the one time but that is granted -- I don't want them to come back with another want to use technology. It seems that one time is enough for my purposes.

Senator Dymally: So you modify your amendment in accordance with what I have's observations were?

Senator Dymally: I do, and move to strike C at the bottom of 14 and top of 25 and the other two that are

obviously improper use of words on page 45, line 9. Strike "granted" and substitute "retained."

Line 18, words should definitely have been an extension granted rather than a delay granted.

I would also say, Mr. Chairman, I don't have any particular desire to have the five years that is in the bill. If somebody thinks two is sufficient, or three, it is fine with me. I just wish there could be a reasonable amount of time to prove up the technology and get on board.

Senator Muskie. Three years?

Senator Domenici. Three is adequate for our purposes.

Mr. Billeggs. If this amendment is adopted, would you have any objection to looking at a redraft of the first part to make some sense out of it without changing the substance of it?

Senator Domenici. The answer is no. I would like to look at it before it is submitted as part of the final draft. But certainly I have no objection to that.

Senator Muskie. Are we ready for the question?

Senator Burdick. Just a minute.

Senator Muskie. We are not trying to close anything off.

Senator Burdick. Is there going to be a modification of it?

Senator Muskie: I take it as a technical improvement.
 Mr. Dillardo: What I just asked, in addition to the
 change Senator Domenici made, which altered up a technical
 problem and removed paragraph C, the amendment is poorly
 written. It was poorly written and it needs some technical
 work, and I was just asking Senator Domenici if he would
 have objection, if the amendment is improved, to making
 technical changes in it. And, of course, preserving his
 right to make sure there are no substantive changes.

Senator Domenici: I never had thought of it in that
 light, but obviously the Senate, but for the filibuster,
 was prepared to pass this bill, so it seems to me my amendment
 has served a good purpose, aside from putting in our bill
 what I think should be in it.

Senator Muskie: Your amendments are always designed
 to serve a good purpose. They don't always achieve that
 result.

Senator Domenici: We are waiting to see how you vote,
 Mr. Chairman.

Question: I think what you is saying, the House version
 of this needs editing or rewording, the purposes we have set
 out: I have argued to a change to develop recurring applications
 for new technology, and the two purposes discussed there are
 obviously erroneous.

It was asked if in addition they had the amendment

to make better homes with what they are trying to do, and I agree. And with these qualifications, I move the adoption.

Senator Burdick. Would you give me the time frame? You build a new plant and in three years you have to build another one?

Senator Domschitz. No. If you build a new plant and you apply for a waiver, the waiver would ask that you be permitted to open the plant before you have all of the new technology on board. But you cannot get longer than three years to get that on and be in compliance with new source performance standards. Three years; this bill has five.

If you don't succeed, then you are put back on the regular compliance schedule and have to get it up to new source performance with other technology in mind.

Senator Burdick. And the only time you lose in the process is close years?

Senator Domschitz. That is correct. And in this time you are not violating the ambient standards.

Senator Hart. What is the latitude of this in terms of the number of companies that could qualify for the waiver? Is it a floodgate type of thing, since an awful lot of people around the country could qualify for this provision?

Senator Domschitz. I honestly don't think so. I still cannot answer as I did to Senator Claiborne's question.

because I think it was not in another way but similar. He
hardly said can you have any big thing and call it a new
technology, and I think the assessment is tight enough it
could have to us a new technology and has a chance to do
better than any existing technology, no health risk attendant
to it, and the government must ask for the waiver.

Senator Hart. If someone is in New Mexico trying a new
technology. What if companies A through G in other States
of the Union are trying the same technology, do they get
the same waiver?

Senator Durenberger. I assume the rights are all the
same and putting on the nuclear coat. This technology that
I referred to specifically in my discussion, I am not
oriented to tell you we would be granted it and they would
denied it. I just don't assume it is going to have
application to a lot of new participants.

Senator Durenberger. If the application is made by the
banks of innovation, that's that by definition a limited kind
of thing. You can't ignore on a national basis.

Senator Hart. That is exactly my question. The point
is a technology or piece of equipment that a company in
New Jersey is trying out on a demonstration basis -- it can
be one, is at 30 companies in the country -- they ought to
get a waiver.

Senator Durenberger. Don't think the Energy Secretary

1 should be treated as mandating subsequent waivers. I don't
2 think that is Senator Biden's view.

3 Mr. Billings. I think the deletion of subparagraph
4 C, that paragraph said you could have other waivers, other
5 applicants.

6 Senator Muskie. You might want to try this in two or
7 three places.

8 Senator Bork. With respect to such technological
9 systems, I guess is the key phrase.

10 Senator Muskie. Should we indicate in the report
11 language this is not designed to open the door?

12 Senator Biden. I think there are two answers I
13 would like to give. First, I certainly don't think if
14 this technology is proved that somebody could use it,
15 and it is innovative.

16 Senator Bork. But simultaneously.

17 Senator Biden. It would appear to me that might
18 very well give the administrator a reason to say (b) is
19 not innovative and inconsequential, it is really something
20 other than that.

21 Senator Bork. But you would want to get language to
22 clear that absolutely.

23 Mr. Billings. Rather than deleting all of subparagraph
24 C, what if a period was put on line 3 after the word
25 "system"? So it says, "After, having received under this

1 subsection with proposed technology, an additional waiver
2 can be created on such technological system," period.

3 "After a waiver has been granted under this subsection with
4 respect to the proposed technological system, an additional
5 waiver may be granted with respect to such technological
6 system."

7 I think that is probably the effect of killing the
8 paragraph anyway, but it certainly makes it clear.

9 Senator Hart. That would help.

10 Senator Domenici. It helps. I really agree more with
11 something Senator Mikulski said in response to your question,
12 that there are two or three are needed. I think that language
13 may be vague, just one, and I don't know if that is what
14 we want either. I don't know the spectrum well enough.

15 We had a similar experiment, incidentally, under the
16 Federal Government of the so-called night scope where
17 they tried this and it turned up. I would hope we wouldn't
18 grant this now.

19 Senator Mikulski. You wouldn't want two or three up.

20 Senator Domenici. I would like them to make their
21 decision they are getting for it. In this case it is a
22 \$210 million risk, so I think that we're pretty much confident
23 in it.

24 Okay, yes, we will try to work on language to make sure
25 we cover your concern and bring it back to [unclear] item 12

questions, and vote on it again? I would like to vote on it now.

Senator Muskie. Now all know what we are studying for, why don't you bring it back to the committee when you get your work done on the draft.

Are we ready for the question?

Mr. Cummings. Do you want to do a roll call?

Senator Muskie. I don't know if we have proxies represented. Why don't we have a voice vote at the moment?

All those in favor of the amendment say aye; opposed?

Senator Muskie. The amendment is carried, subject to the understanding we have reached.

Have you got anything else on this beauty parade?

Senator Domenici. Item 13, I have two Senators that are interested in that one, though I would like to try to see if they are going to be here and hold up on it.

Senator Muskie. Does anyone else have an amendment?

Senator Hart. I'm supposed to be running this show. I yield to Senator Hart.

Senator Hart. What does the staff recommend, since we lost the agenda in terms of regularity?

Mr. Williams. The staff would be happy to go back to that addition.

Senator Muskie. Why don't we return to the nearest one on the list that we haven't brought up?

1 Senator Hart. Four and five, the sponsors are not
2 here.

3 Mr. Billings. Six is the same; seven the same.
4 We can go to EPA representation and the question of --

5 Senator Hart. I think we should take that up. We
6 might as well. Would you staff care to outline the issues?

7 Senator Sundick. Which one is this?

8 Senator Hart. No. 10 on the agenda.

9 Senator Muskie. John tells me the chairman would
10 like to be here for that.

11 Senator Hart. Could we start discussion?

12 Mr. Tago. Sure.

13 Senator Hart. Leon?

14 Mr. Billings. Do we have language? Did you distribute
15 language?

16 This issue was in the House bill last year and was
17 not adopted in the conference and involves whether or not
18 EPA should have authority to act directly without going
19 through the Justice Department to bring enforcement actions
20 against violators of the Clean Air Act; specifically, actions
21 against violators of the Clean Air Act.

22 Under present law, EPA is required to go through the
23 Justice Department and the prosecutorial discretion of
24 the Justice Department. The effect of this has been only
25 minimal. The Justice Department has been bringing actions

1 within EPA because the Justice Department has been reluctant
2 to refer actions to them.

3 The reason that the staff brings this to the members
4 is the concept that after a rather elaborate process established
5 in the Clean Air Act to develop requirements, impose controls,
6 establish standards against which polluters must perform,
7 the enforcement is then passed over to a very erratic and
8 uncontrollable process primarily based on the instincts
9 of U.S. attorneys in the various districts and whether or
10 not they want to pursue recommended enforcement action.

11 It is thought this provision would give EPA the authority
12 to act to enforce the law as Congress intended without
13 these political problems associated with U.S. attorneys.

14 Now, the Attorney General has written to each member
15 of the Committee in opposition to the amendment, and the
16 Environmental Protection Agency has not taken a position
17 in favor of the amendment.

18 I guess that is where it is.

19 Senator Dart: Well, I would like to ask the staff
20 some questions. This is a serious policy issue. Not
21 personally as an attorney of both the Justice Department
22 and the Interior Department I have had some familiarity
23 with them.

24 The Justice Department generally likes to be the
25 lawyer for all of the government agencies for all of the

government, and where possible they try to control
 their authority to government departments agencies. And I
 think that is Judge Bell's position on this matter.

On the other hand, because of shortages of manpower
 and political pressures and other things, in some cases
 depending on which Administration is in power and so forth,
 they have not been able to bring cases that enforce the law.

My own personal preference is to have the Justice
 Department be the lawyers for the United States of America
 and the people of the United States, and for the government
 agencies to keep from having a dispersed prosecution, if
 you will, authority throughout the Federal Government, because
 I think that is a serious policy problem.

But what the staff, I think, should tell us is the
 degree to which over the course of history of that law
 the Justice Department has, in fact, been diligent or not
 and the degree to which Judge Bell's letter represents a
 flat commitment on the part of at least this Administration
 and this Attorney General to prosecute this law diligently
 regardless of the political pressures on local U.S. attorneys.

Senator Feeding. Gary, I would like to speak at
 this point for staff. We had a letter, presumably the same
 letter, to all members of the committee, seven March 7th,
 and I particularly am impressed by the language which
 states, "I do swear to prosecute those who violate the

of the Justice Department in its past representation of EPA. I want you to know that I plan to more vigorously improve relations between the Justice Department and EPA.

"The person I am proposing to nominate for Assistant Attorney General for the Land and Natural Resources Division will be an outstanding lawyer committed to vigorous enforcement of the Clean Air Act who will promptly identify past problems of EPA representation and work toward their alleviation as a highest priority."

I took occasion to call Judge Bell, the Attorney General, and referred to exactly the paragraph I have read. He reinforced in his telephone response that that is exactly what he meant to do. It so happened that at a dinner that same night, at which we were in attendance, he took occasion to come over. I don't think it was because it was so particular, but because he wanted me to carry to you today his expression of what he said by letter to all members and committees when I made the phone call.

And to Michael expressing to you some idea that I think he is very sincere in his desire to more vigorously and I think it is important that he quickly indicate that he knows the job within Justice has not been done.

Sensor Carl. Are there been a number of other Assistant Attorney Generals?

Mr. Billings. The chairman will be Mr. Jim McGowan, when the Attorney General went to his office to meet with the staff, and we were advised that we would be notified as was going to be the position. It happened at the present time, I think, to be brought to the Sierra Club, and he expressed his intention to vigorously enforce the law.

The staff tried to impress on him we weren't proposing this amendment because we had doubts of his willingness, but we were concerned about the fact the law had not been adequately enforced in the past, and this provision would only amend the Clean Air Act, and he would have the Water Pollution Control Act and Toxic Control Act, Noise Pollution Act and others to prove his enforcement.

Senator Randolph. Gary, would I add when I made the fight against indiscriminate cutting in the national forests, which was a matter of quite a vigorous effort that I made -- I didn't succeed as I wanted to -- but I called on Mr. McGowan of the Sierra Club to help me, and he was a help.

Although we did not prevail, I still feel that his attention to what I believed to be a protection of the national forests of this country was one that he thoroughly understood. So I think that perhaps, although I was disappointed very environmentally, that the kind of the way, the conduct of the way, I think, would be directed

1 to do this job.

2 I am not here as the adversary of the Attorney General;
3 I am only attempting for us to take at least what the
4 Attorney General has said in writing, has said in conversation,
5 and the type of person he has chosen for the position in
6 question.

7 Senator Hart. What concerns me is not this individual,
8 but the policy. And I have already stated that I intend
9 to side with the Justice Department's position on those
10 matters regardless of who is in power. But this individual
11 will be gone someday. And probably no area of governmental
12 prosecution causes more sensitivity than economic areas,
13 and I consider these issues we are discussing as economic
14 issues. The other is the antitrust. I think these are
15 the two areas most sensitive to political pressure. We
16 don't have merit selection of U.S. attorneys now,
17 unfortunately. We all get involved with U.S. attorneys,
18 depending on what party gets in power.

19 Senator Muskie. Do Senators have something to say about
20 it?

21 Senator Hart. I am told.

22 Senator Randolph. I don't mind the record indicating
23 at this point that I have taken an interest in U.S. attorneys
24 in the State of West Virginia. And, very frankly, I trust
25 any time there are times, if ever circumstances, I will not object

1 when I know the ability of the commitment of that attorney
2 to be of the type that if given that job he will really do
3 a good job.

4 And I have never felt sensitive about that recommendation
5 that I have made for the Federal attorneys in the Northern
6 District of West Virginia. I am not always sure that the
7 so-called merit system -- because I consider that a merit
8 system in which I am a participant.

9 I remember on one occasion there was a disagreement
10 at the time that President Johnson was in the White House
11 with, frankly, the Attorney General at that time, Mr. Clark.
12 And Mr. Clark was not in agreement with my position as to
13 the person. And I shall never forget, for what it is worth,
14 that the President said, "Well, I think I will side with
15 Jennings Randolph against you. He has grown up with this
16 man, he knows this man and we will see what happens."

17 Later Ramsey Clark came to me on two occasions. He
18 said, "I was wrong. This man, I have worried him because
19 of this situation which happened, and I am glad that what
20 took place did take place, that the advice followed
21 by the President in that instance was against me and
22 apparently for you."

23 So I am not always certain that there isn't a bit of
24 a Gary Hart. The commitment of a Gary Hart, or an Ed Muskie,
25 or of a Lloyd Bentsen or someone around this office.

1 Senator McClure. Mr. Chairman, has this amendment been
2 offered?

3 Senator Murkin. It is before me.

4 Senator McClure. Now is it before us unless it is
5 offered?

6 Senator Murkin. We came to it on the agenda, didn't we?

7 Senator Randolph. It is a staff recommendation.

8 Mr. Billings. It is a staff recommendation to the
9 committee.

10 Senator McClure. If we just go on down to the next
11 item on the list --

12 Mr. Billings. The staff will feel rejected.

13 (Laughter.)

14 Mr. Billings. Not only that, the staff will be rejected.

15 Senator Randolph. He means dejected.

16 Mr. Billings. That, too.

17 Senator Murkin. It seems to me, Mr. Chairman, that the
18 point has been made, and I wonder if we couldn't include
19 in the report expression of our concern about the past?

20 Senator Randolph. Yes, sir.

21 Senator Murkin. Include in the report a copy of the
22 Attorney General's letter and put in strong language indicating
23 we are helping when his absurdities contained in that letter
24 be corrected the past.

25 Senator Randolph. Oh, I am in thorough agreement.

Senator Muskie. And the House had this amendment.

If the House feels as strongly, presumably the issue will be in conference and we can beat the issue out finally there.

Senator McClellan. Mr. Chairman, so we might have the record that we will take to the House committee, maybe it is well we vote on this amendment now so we can't say we didn't consider it.

Senator Randolph. I hope we can do that.

Senator Muskie. I would like to offer this approach as a substitute.

Senator McClellan. I want the staff to be dejected rather than rejected.

Senator Burdick. Mr. Chairman?

Senator Randolph. Yes, Senator Burdick?

Senator Burdick. I think we are a little bit on dangerous ground here setting precedents. We have one Attorney General, and if we start out on a program like this, every department in the government will want an Attorney General. I am well aware what the Attorney General said. He said he would improve things, and I wouldn't want to vote unless we had him before us and asked why he didn't enforce it. Maybe that being my legal statement. I would have to vote against any of these amendments.

Senator Muskie. I proposed the report language as a substitute.

1 Senator Randolph. You heard that motion. Is there a
2 second?

3 Senator Hart. Second.

4 Senator Randolph. It is made by Senator Muskie and
5 seconded by Senator Hart. Any comment?

6 Senator McClure. What is the report?

7 Senator Muskie. What I suggested in the thrust of the
8 report language is that I would like to see an indication
9 of our concern that there has been less than the kind of
10 cooperation between Justice and DEA that there ought to be,
11 and reference to this amendment which was adopted by the
12 House last year and on our agenda and our decision to go
13 along with the Attorney General's letter.

14 Senator Randolph. And a copy be included.

15 Senator Muskie. A copy of the letter to be in
16 the report. Beyond that it is rhetoric, but that is the
17 basic thrust of what I would like to see because I am
18 inclined to feel the same way. That every department should
19 not have its Attorney General, but at the same time pressure
20 put on Justice to respond.

21 Senator McClure. I am not sure how far I would agree
22 on how little cooperation there has been. But I have no
23 objection to the thrust of the idea that the suggestion
24 should not be embraced that we indicate they should have
25 independent counsel. But I have no objection to suggesting

1 on the Justice Department that GSA should cooperate.

2 I suppose cooperating is a two-way street and sometimes lack
3 of cooperation is felt by one party to the discussion when
4 the other party doesn't agree with them.

5 I expect the staff is about to decide the committee
6 is not cooperating with them.

7 The point I am trying to make is the apparent
8 cooperation or lack thereof may be a judgmental matter
9 depending on whether the action taken was desired or not.

10 Senator Moskowitz. I suggest this isn't related to a
11 disagreement of a given issue. We could pursue it further.
12 I suppose, to establish the existence or nonexistence of
13 that pattern. But I think what ought to suffice in the
14 report is to indicate there is concern whether or not there
15 has been effective cooperation, that the concern has generated
16 this amendment, and on the basis of the Attorney General's
17 letter which also refers to this dissatisfaction.

18 Senator Randolph. And he not only speaks of the
19 dissatisfaction, he goes on to make himself of saying it has
20 not been a vindication --

21 Senator McClellan. Mr. Chairman, all I wanted to avoid
22 doing is a finding of this committee that the Justice
23 Department has been at fault.

24 Senator Randolph. Let's win. It is best to have the
25 roll called.

1 Mr. Yago. Senator Anderson?

2 Senator Anderson. Aye.

3 Mr. Yago. Senator Baker?

4 (No response.)

5 Mr. Yago. Senator Benson?

6 Senator Benson. Aye.

7 Mr. Yago. Senator Burdick?

8 Senator Burdick. Aye.

9 Mr. Yago. Senator Chafes?

10 (No response.)

11 Mr. Yago. Senator Culver?

12 (No response.)

13 Mr. Yago. Senator Dommick?

14 Senator McClure. Aye, by proxy.

15 Mr. Yago. Senator Gravel?

16 Senator Randolph. Aye, by proxy.

17 Mr. Yago. Senator Hart?

18 Senator Hart. Aye.

19 Mr. Yago. Senator McClure?

20 Senator McClure. Aye.

21 Mr. Yago. Senator Moyahon?

22 Senator Randolph. Aye, by proxy.

23 Mr. Yago. Senator Muskie?

24 Senator Muskie. Aye.

25 Mr. Yago. Senator Reedford?

1 Senator McClure. Aye, by proxy.

2 Mr. Yago. Senator Walllop?

3 Senator Walllop. Aye.

4 Mr. Yago. Senator Randolph?

5 Senator Randolph. Aye.

6 Mr. Yago. The motion is carried by a vote of 11 to
7 nothing.

8 Senator Randolph. No one is seized or rejected.

9 (Laughter.)

10 Mr. Billings. We were not going to leave the room.

11 Mr. Chairman. Not that we wouldn't like to.

12 Senator Randolph. What was that?

13 Mr. Billings. Not that we wouldn't like to.

14 Senator Randolph. I want that on the record.

15 (Laughter.)

16 Senator Randolph. Now, other amendments pending?

17 Senator Hart. We are having a difficult time getting
18 a high-altitude gamma maze.

19 Senator McClure. Senator Cossarici will be back.

20 Senator Randolph. Now, you are referring to the Rocky
21 Mountain situation?

22 Senator Hart. Yes.

23 Senator McClure. Mr. Chairman, perhaps pending the
24 return of the Senator from New Mexico, we might at least
25 discuss the problem in the high-altitude situation. Perhaps

1 the staff would correct me if I am mistaken, but I think
2 the problem arises in this fashion. That automobiles are
3 produced or certified for performance at low and medium
4 altitudes and they require a separate certification for
5 high altitudes where the atmospheric conditions are different,
6 and, therefore, the carburetion and the emission controls
7 must differ.

8 The automobile companies have responded to that by
9 certifying only a portion of their production line output
10 for marketing at high altitude. And it becomes illegal
11 for a dealer at low altitude to sell a car to someone who
12 is a resident in a high-altitude area if that particular
13 car has not been certified for high-altitude performance.
14 The automobile companies will not certify the whole line
15 because of the cost of certification and the relative small
16 numbers of cars that are sold at high altitude.

17 So the dealers at high altitude have only a portion
18 of the complete line of automobiles that they can legally
19 market through their dealerships. The result is you have
20 people going from high altitude to a low altitude, lying
21 about the point of residence, buying a car and driving back
22 up the hill.

23 That has happened, to my knowledge, and it causes the
24 dealers in the high altitudes a great deal of difficulty
25 because the prospective customers can't buy the particular

1 car they want to buy in their local dealership. It becomes
2 a problem for the citizens in the high altitudes because
3 they are unable to shop for the same range of automobiles
4 that other citizens can that do not live at high altitudes.

5 It seems to me there are two or three possible solutions
6 to that problem. One is to exempt from certification
7 requirements for high altitude, if that is felt to be a
8 suitable alternative. The second would be to require that
9 the auto dealers, regardless of cost, must certify all
10 automobiles for high altitude as well as low altitude of
11 performance as a condition for being able to market them at
12 either altitude.

13 There may be other possibilities or variations on the
14 theme in regard to extensions of time, some additional
15 studies by EPA, some additional discretion granted to EPA.
16 But I think the problem is a very real one for at least
17 some of our people. And I know Senator Domenici shares
18 with me this concern, and certainly Senator Hart has the
19 problem in Denver.

20 So I don't know what the answer will be, but I think
21 we must try to find at least some direction for a solution
22 to this problem.

23 Senator Domenici. Mr. Chairman --

24 Senator Morkie. This is the country's great amendment.

25 Senator Domenici. Amended good?

(Senator Muskie nodding.)

Senator Doddridge. Is it not the desert rat is it?

Senator Domenici. It can be either one as long as it gets your support.

Senator Doddridge. Well, call it what you like, have you proposed the amendment yet?

Senator Muskie. Is this the amendment here?

Senator Domenici. I think the amendment is now before you.

Senator Muskie. This says the Domenici high altitude. Is that the one?

Senator Domenici. That is the one.

Senator Muskie. We go from the depths to the heights around here fast.

Senator Domenici. Well, that is really what it is, but we could have done a better job of phrasing it.

Let me move the adoption of what is now before you, the high-altitude amendment, and let me tell you what it does. First, it suspends the high-altitude regulations until final compliance with the standards. That means if by the year 1980 or '81 we have a final compliance schedule for automobiles in this country, that compliance will consist of all cars meeting the standard regardless of the altitude, and in the interim time a study is conducted on the economic and technological feasibility.

I think that, unless Senators have received complaints from their area, they are not even aware that even though this Congress has on a number of occasions opted against a two-tier strategy in this country, with the exception of California, that indeed we have not growing up by regulation a two-tier strategy in that there are high-altitude standards and they are being set in a very strange way.

Because what is really happening is the automobile manufacturers are doing nothing to solve the problem, but rather part of their fleet means that and part of it doesn't. So that what is happening is that the one-third of this nation which is over 1,000 feet, into which only two percent of the cars are sold, the manufacturers' response to this is just to cut the fleet that they send to that area.

And we have been getting in all of the high-altitude communities -- many very small, 250 to three thousand people -- we are getting a 50-percent reduction in the fleet availability by customers. And, thus, residents of that area, if they walk into the Ford dealer, they can't get cars, but if they drive down the road to one 1,000-foot-high competitor dealer, he has the entire fleet.

A totally unacceptable thing; only if that buyer moves from Ford dealer A in 4,000 feet down to dealer B, who sells cars in 3,200, all he has to do is not tell them he is a resident of another community and he can buy any car

1 there that meets the overall national standard and drive
2 them on by the bill.

3 Fleets are being sold in strange ways. You know, parts
4 and others buy fleets in a community and rent from there.

5 Senator Jenkins. I appreciate the Senator and will
6 vote for his amendment, but don't appreciate using Rubbock
7 under those circumstances.

8 Senator Weeks: Would you like to use a town in Maine?

9 Senator Domenici. I see what is closest. Oklahoma City
10 to New Mexico.

11 Some interesting things are happening that I think
12 point up the need to adopt this amendment. The automobile
13 manufacturers are producing a number of fleet items, such
14 as the police cars and the like, and they don't meet high
15 altitude standards. In a community has to buy them in
16 another town. They can't buy them from their own dealers
17 because certain of the Plymouth cars, certain Pontiacs,
18 for instance, that are being made for law enforcement
19 officials because of that little difference in the standard.

20 They obviously can't violate the law and sell them to
21 a dealer in Albuquerque who wants to sell them then to
22 the city of Albuquerque, so they sit without being able
23 to buy them or they are going to have to make some arrangement
24 that is not legal, perhaps renting from another community
25 or dealer in another town.

Senator Wendenburg: Just as certified. I am in need of clarification. Our officers are not. Did you say the fleets, Peru, are bought in the name of the word of the region that they are to serve?

Senator Wendenburg: There are certain arrangements wherein a city in the high altitude used to sell a fleet. Now is that city or community is 8,000 feet high, many of the fleet cars don't meet high altitude qualifications, so the fleet is bought in another town instead of the town that is 8,000 feet.

I would say many of the communities are small communities that have the burden imposed. I think there is no problem with their ambient air. I will acknowledge there is a growing problem in the city of Denver and I am sure Gary will address that. And there is a growing problem in the biggest city in New Mexico that may be alleviated by the high altitude standards.

In my view, in the next few years the benefits attendant to economic conditions in keeping this in effect are so small we would probably be prudent to waive it and have all cars to meet the standard. We have two the full power.

Senator Winkle: When they want now to do anything?

Senator Wendenburg: On 11 when they meet the national standards no separate certification for high altitude. I would say, Mr. Chairman, there was no such distinction this year. There was no separate certification until this year.

We are not talking about something something that had that be-
five years' time and it is some of something that the city

Senator said. I understand Senator Domonic's diplomacy
in referring to Denver's growing problem. Denver has a
real problem. The Chamber of Commerce doesn't like me to
say that but there it is. And it doesn't go away because it
is something down the road.

It is a problem now and not because the way it looks
but what is inside that grows along. And it is not going to
get any better in the next two years or four years or however
many years if we just don't remedy the automobile industry
to address the problem.

So as much as I wish I could agree with Senator Domonic
on this approach, I just can't and don't think it is the way
to solve the problem. I think there is a solution that gives
the city a little more time to take care of it, but which
does not at the same time sort of give up on a solution in
the meantime.

And I am willing to propose a couple of alternatives as
alternatives to Senator Domonic's proposal. But the fact of
the matter is the problem is here and it is now and the
automobile dealers of the metropolitan area in Colorado agree
that it is here and now and they want there was some solution
to it. And they don't have any to do because they have to
take the cars that are given to them.

1 Finally, I think the solution probably is to require
2 the automobile industry to continue to certify roughly the
3 same number or percentage of model lines that they are today,
4 but give them until 1980 to certify all of them. That part
5 of the Boardman proposal I agree with, that by 1980 all cars
6 should be certified for high altitude performance.

7 But in the meantime, we are now going to take care of the
8 problem of the hundreds of people in Denver and other places
9 by telling them they don't have to do anything else until
10 then. So I think we ought to require them to certify at
11 least a number of model lines or two or more percentages which
12 is roughly half, I think, of the model lines that they are
13 now certifying and say all the rest of them will have to be
14 certified by 1980.

15 Senator Sordani. Are you proposing that amendment?

16 Senator Hart. That is a proposal of an amendment to
17 Senator Boardman's proposal.

18 Senator Sordani. You know, I think it is probably fair to
19 say we are trying to address with national legislation the
20 problem of essentially four states. And you know, frankly, I
21 would have thought that was an obligation of the Colorado
22 legislature as much as California has taken the lead by the
23 having its own state.

24 Let me point out to you some additional and new little
25 things it has in State since 1975, for example. Our two parks.

Yellowstone and Teton, 1 million; and that alone, usually, 10 times the population of the entire State of Wyoming. On Interstate 25, which traverses Wyoming across the northern border of its east or west, about 78 percent of that traffic on there is interstate traffic. It comes from below 4,000 and goes to below 8,000.

So my argument is 14 percent, and 83 at the outside, are cars in Wyoming which are asked to pick up the environmental standards for the remaining traffic. It is unfair to a population that really isn't significant enough to be affecting it in terms of the other traffic over State. To require them -- or I can prohibit some of the ownership of the line of cars that exist --

Senator Hart. The quarrel is really with Senator Bonafini, not with me because his proposal, as I understand, all cars certified by 1980 for high altitude.

Senator Hailor. That could be done with certifying, standard certifying system.

Senator Hart. I don't know the solution. There are a variety of solutions, but the question is your quarrel is not with me over the years 179 and 180, it is with Senator Bonafini whether all cars should be certified by 1980, I take it.

Senator Bonafini. If you were going, only, for 179 and 180 -- you'd have that solution population on my case.

Senator Burt. Yes, sir. What I said was a certificate, at least the quantity of model lines now certified should be maintained. I mean if your proposal would say to the automobile industry even the certification they now have doesn't be maintained for '78, '79, and presumably '80, I don't know. So you are permitting them to restore from a position they have assumed.

I am saying restore them to assume that position or give a couple more years to solve the problem. And I don't know how you define a slice when you say four slices. It is getting to be a problem in Colorado Springs and a front ranking problem for our State. That is to say, up and down the eastern end of the Rockies and 80 percent of the State of Colorado.

Senator McClure. Could I ask a question of the Senator from Colorado? If I understood the thrust of his argument, he is saying the current model lines roughly half, I think, it may be a little less than that, have all of the options or now certified for basic equipment and ought to be required to certify at least half from what they are now at.

I would also understand that auto makers their full line certificate whether they were certified the full certificate in that context?

Senator Burt. What is correct.

Senator McConnell. Thank you very much.

Senator East: Until your year of '88.

Senator Coleman: I didn't understand it. I will save the objection.

Senator Hart: I think the way your language is set up they don't have to do anything until 1980. They can abandon the middle line they have now.

Senator Coleman: I agree with you. I didn't intend it. I assumed they would continue on percent of the finest certifiable.

Senator Hart: I guess all I am saying is let us formalize your assumption.

Senator McCallum: Does your amendment say the same proportion they now do or one half?

Senator Hart: I have no magic information there, but roughly to keep them at the level they have already achieved. And is it roughly half the wage line?

Senator McCallum: Some proportion of wage.

As a witness. The language to reflect the same proportion currently certified as the high altitude.

Senator Hart: The wage line of the written words can solve that problem.

Senator Welch: I agree with that.

Senator Hart: Can we specify January 1, '88?

Mr. Phillips: That's right.

Senator Hart: All right. That's all. That is that.

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Senator Connally. Before I answer that, let me ask the staff side public question and I want it on the record. The 30 percent of the fleet now being sold in high altitude communities that we have been working upon in our States, is there something especially added to those cars that cost money or does it just happen that that model meets the high altitude certification?

Mr. Billings. If Billings from company to company, Senator. I believe that one of the companies sells its California system at high altitude. Another company manufactures and fuel system or the manufacturer and separately certifies one for high altitude.

In terms of pricing, as I understand it, and I don't. The relationship of emission controls and price of cars is not terribly clear.

Senator Connally. There are two items of cost, I think. For those you add additional devices to control the emissions more costly at high altitude or does it is a special provision for emission controls at high altitude is that element of additional cost. Or is a separate element or additional cost of making the certification more for high altitude.

So we are in agreement that one certified for high altitude that would nevertheless meet it is tested for that.

Mr. Billings. That is not necessarily so, what we

individual car would be priced to reflect the exact costs that go into either constructing or adjusting because that is not the way they price cars. It depends on the individual company's decision on how to price.

Senator Walling. Was the main manufacturer in trying to cut an average of \$32 a car to meet the certification standards?

Senator McNamara. I think the average cost of \$32 is for additional equipment but not for additional certification cost.

Senator Walling. That is right.

Senator McNamara. I don't know what the answer is, but I can certainly by the formulation that my two friends suggested.

Mr. Billings. We will bring language back to the concerned members.

Senator McNamara. Mr. Chairman, do we have any present schedule when we are going to meet again?

Senator McNamara. We are going to finish the bill this afternoon.

Senator Hart. Do you think the shackles are on your leg?

(Laughter.)

Senator McNamara. Could we defer this for a few moments? It seems you have done it with a good compromise. I don't know the impact. My own lawyer's opinion, and perhaps worse, I just guessed that the industrial portion of the House was qualifying and in this little or no change in the

the manufacturers wouldn't have met the fact of cutting out a portion of the Fleet. If they had had something to the fear of that Fleet, I would have thought they would be doing it.

So I thought they were going to leave that portion of the overall approximately they were selling \$4,000 down and above, and I assumed there would be that much clean-up, again, because they would still be there and absorbing the additional lines they have taken out now.

That is clearly your amendment to my amendment is mandatory, and I would like to make inquiries before I agree. Can we defer it until I find a few answers? I guarantee 30 or 40 minutes and you will have an answer.

Senator McNamara. Talking about the proportions of Fleet options now certified for high altitudes and not talking about the actual size of sales at a high altitude or low altitude?

Senator Hart. The proposal as originally formulated, it would have permitted them to proceed without accomplishment. I think the answer you are going to find out is they got the lines they got by about a 125 cost or whatever, and the rest of the cost was a little more and allowed to add that cost on for four it would not have their sales.

Senator McNamara. There is another problem that exists with it that I hope whatever the final conclusion is will reflect, and that is the belief that the cost is \$4,000 per

area can track down to David Green Grove in the head card,
but it doesn't work going back the other way and puts them
at a considerable disadvantage.

And the other thing is with fleet bidding, as the Senator
from New Mexico was talking about, we have a dealer in Wyoming
who did so and was awarded a police car contract. The promised
delivery date was October 23 of last year. And as of now,
EPA has still not certified the engine that was awarded in
this contract. They, though, promised the certification would
exist. So here is a guy who has lost a contract sale because
of circumstances totally beyond his control.

He should be able to deal with that in your amendment.
If it goes over across.

Senator Hart. The only way you are going to solve the
first part of your problem is carry all cars for high
altitude.

Senator Wallon. I think in time that can be done.

Senator Hart. I can be done now.

Senator Wallon. They can do it with fuel injection. But
I am also informed that-- is the possibility they can do it
with an emuloid carbureting system which adjusts at any alti-
tude, which is probably in the block run for several years I
bring up. That I believe various are working in do with
what we have above 4,000 feet. So we should come to the
view that sort of thing.

Senator Harkin. Well, I think, would like about 15 minutes. Before we vote on another wilderness.

Senator Hart. We are now scheduled up, I think, as far as five votes. We voted on wilderness. Do we have any other votes pending?

Mr. Cavanaugh. No. The only remaining items that have been discussed --

Senator Hart. Are we prepared to vote on fuel additives?

Senator Harkin. Yes. Why don't we?

Senator Hart. We are not prepared. Are there any votes which can be taken now?

Mr. Billings. Here is Senator Gravel.

Senator Hart. Are there measures upon which we have had discussion and all we have to do is vote?

Mr. Whittenaker. We are in the middle of a discussion.

Senator Hart. What about item 11, Environmental Review Board? Fuel additives?

Mr. Billings. Senator Gravel is coming up. He has two amendments. One on transportation controls.

Senator Hart. Senator Gravel has arrived.

We are now going to hear item no. 11 transportation controls.

Senator Gravel. I have 10 minutes. I don't think we should punish people by taking away good jobs that had already been going to certain firms, but I don't have 10 minutes.

(Laughter.)

Senator Gravel: We do have legislation, we are trying to punish these people by withdrawing from them money that would go to help the cleanup of the environment and I think we are better advised, if punishing people for not doing something, we should take away money of items that cause a diminution of the environment we enjoy.

Senator Muskie: How about a jail term instead?

Senator Gravel: You can propose it but I wouldn't vote for it.

Senator Hart: What are the antecedents of good stuff and garbage?

Senator Gravel: We are taking away money, water-sewer money, solid waste money, I believe, to be precise, is what we would be denying them, and staff can correct me if I am wrong. My Amendment would take it out of the purview of the EPA and make the Department of Transportation to suffer some impact as I recall.

But I think that would be more meaningful, if a lot of consideration, we put into the Highway Funds rather than put into the sewer funds. I haven't had a chance to consult with my colleagues from Maine.

Senator Hart: How many States, be civil, or add any more?

Mr. Gravel: We need two bills, one, providing the

1 Some of direct sanctions for the EPA administration. The
2 first is against a State when two State fails to request an
3 exemption to revise the transportation control plan or fails
4 to submit a revised transportation control plan. The second
5 sanction relates to the failure of the region to implement
6 and improve transportation control plans.

7 But the sanction relates to the grant award in the
8 administration in the first case in the State, and it is a
9 total ban. And in the second case, it is against the region
10 and a phasedown of Federal grant of 15 percent per year.
11 This would supersede, it would maintain the nature of the
12 sanction and substitute transportation funds for EPA funds.

13 Senator Gravel. Which would make this, in my mind, a
14 little more direct when the violation is with respect to
15 transportation primarily. And if they can't get their act
16 together and come forward and comply, this is the area they
17 should suffer and not go to another area totally unrelated.
18 It is unfortunate I would rather not.

19 Senator D'Antoni. I don't think the Senator is right.
20 I would have to disagree with him. These funds are not
21 EPA's jurisdiction, and I think we ought to have the sanction
22 over the things which which EPA is involved and has jurisdic-
23 tion. And now we are going to stop people from driving for
24 millions back on highways.

25 In addition, while we planned about a 10 billion

primary for buses, surveys, all leading to 1975 and they
timed with these improvements that transportation violations
are going to decrease and that is because of the govern-
ment they have in that city. I would hope we come up with
another solution other than that.

Senator Orvell: Is that plan acceptable to EPA,
they wouldn't suffer as a result of that. So there is
nothing there that would cause that to happen. I certainly
would not want to be viewed as lapping in sport of the
transportation area. I sponsored all of the legislation to
come out of your subcommittee, and the only one to do so.

I don't think we are anywhere related to the Department
of Prisons. You know, if a person commits stock fraud and
is put in jail and passed care of by the Department of Prisons,
that is the different part of the budget.

So, you say, we can sit here and pass laws and I think
the logic backed the question. If a transportation violation,
let us hit it in the transportation funds and the result would
be a limitation to some laws that would take place.

Senator Hancock: I don't think that is right at all.

Senator Orvell: It may be a stretch.

Senator Hancock: It is a bit of a stretch.

Senator Orvell: I will acknowledge that point. I think
it is time to stop talking.

Senator Muskie: Nobody else in this Committee understands.

1 Senator Gravel: I would be happy to answer questions.

2 Senator Hart: Any questions?

3 Senator Dole: I think his amendment makes considerable
4 sense, at least part of it. It seems strange the penalty
5 for having dirty air is you are required to have dirty water.
6 There must be a better way.

7 Senator Muskie: The proposition is if you have to drink
8 it.

9 Senator DeLoach: It is a penalty either way and either
10 one has its effect, I am sure.

11 Senator Muskie: From the eagerness with which States
12 are urging the funding bill for waste treatment plants, which
13 would say they feared that as a penalty.

14 Senator Bentzen: So either has in a real penalty. I
15 just frankly would like to see EPA stay within its own
16 jurisdiction on the things it has control of rather than
17 paying into the highway situation.

18 Senator Wallop: How would this trigger -- how does EPA
19 get to the section of transportation?

20 Senator Gravel: The EPA's CWA would be pretty much
21 one, would it not, even wouldn't it be dealing with
22 percentages for air quality about percentages of water
23 funds so there is nothing for the highway to figure, it
24 just would happen. If you don't comply or don't comply.

25 Senator Muskie: I think it is more the judgment.

1 Mr. Stinger. The commission would make a judgment
2 and notify the Secretary of Transportation and, therefore,
3 take notification. The Secretary of Transportation would
4 be prohibited from approving any project or awarding grants
5 to that State while requests for extensions had been filed
6 or a plan submitted, or in the second phase down until the
7 failure to implement the plan had been corrected.

8 Senator Gravel. So the only difference would be that
9 the EPA director could request the Secretary of Transportation
10 to enforce the law or direct the people in charge of water to
11 enforce the law.

12 Senator Bentzen. But the people in charge of water do
13 have control over and --

14 Senator Gravel. But it is not a directive. I think you
15 need to have control. You just execute the law. Either
16 complying or not complying.

17 Senator Muskie. The more I think about it the more I
18 don't think it makes a difference.

19 Senator Bentzen. The penalties are there either way. I
20 just believe you have more direct control.

21 Senator Gravel. Except you do have a little bit of
22 permission.

23 Senator Muskie. You are worried about the philosophical,
24 you are a philosopher.

25 Senator Gravel. Oh, I think it does have a perception

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Mr. Yago. Senator Anderson?

Senator Anderson. Aye.

Mr. Yago. Senator Baker?

(No response.)

Mr. Yago. Senator Bentzen?

Senator Bentzen. No.

Mr. Yago. Senator Burdick?

Senator Burdick. No.

Mr. Yago. Senator Chafee?

Senator Chafee. Aye.

Mr. Yago. Senator Culver?

Senator Hart. Aye. By proxy.

Mr. Yago. Senator Donnell?

(No response.)

Mr. Yago. Senator Gravel?

Senator Gravel. Aye.

Mr. Yago. Senator Hart?

Senator Hart. Aye.

Mr. Yago. Senator McClure?

Senator McClure. Aye.

Mr. Yago. Senator Moynihan?

(No response.)

Senator Randolph. I regret that I was out. Would
somebody stand what it is and inform me. The issue?

Senator Gravel. I am informed by my staff Senator

th 2 1 Myself, I would support me on this, but give it to you. My
3 staff person calls me and said he would support me on this
4 issue.

5 Senator Benton. Mr. Chairman, he has the votes; you
6 can take your time.

7 Senator Randolph. That wasn't my purpose. What is
8 the amendment?

9 Senator Gravel. What it is is that presently if there
10 is noncompliance or lack of development of a transportation
11 plan within a State, noncompliance within a region is the
12 punishment and you deny them water money to clean up the
13 water.

14 My amendment says rather than deny them water money,
15 deny them highway money. That would be more germane. Its
16 main thrust is we look ridiculous with the policy stated
17 here. If you don't snap up and provide clean air we are
18 going to fix it so you have dirty water, and I think that
19 makes us look ridiculous.

20 Mr. lack of support of highways on my part. I just
21 think we have to find some degree of punishment and either
22 take away water money or highway money.

23 Senator Randolph. Is there any other type of money
24 you can take?

25 Senator Gravel. I am sure we could find something to
26 take away from them.

Senator Waller. School lunches.

(Laughter.)

Senator Gravel. I am afraid I can't offer that amendment.

Senator Muskie. Well, the '76 budget is \$92 billion of grants to schools.

Senator Gravel. Obviously there are places to take funds.

Senator Muskie. That would help us balance the budget, wouldn't it?

Senator Gravel. I am getting a double-dip argument. I think it is unfair.

Senator Randolph. What I want to really seriously ask, we today are denying highway funds presumably to States that do not enforce the national 55-mile-an-hour speed limit. But we find that the Federal Highway Administration is not doing that. Now, the issue is very clear because the cars are used on the roads. Now there is a different situation. Is that not true?

Senator Gravel. I haven't thought of it that way, but it is interesting what you have something in one department and there may be a reluctance to use the weapon. But if you have the difference determined in one department you probably have the likelihood of enforcement taking place in the other department.

Senator Muskie. We have to deal with department in

1 Attorney General Now.

2 Senator Randolph. What is the extent of funds you are
3 talking about?

4 Senator Gravel. Could staff hold us out? How much
5 would be held?

6 Senator Muskie. The percentage.

7 Mr. Cummings. It is 15 percent. In either case, per
8 year until compliance. This is for failure to implement
9 the provisions of the act.

10 Senator Gravel. As soon as they comply they get the
11 money, so there is no loss.

12 Senator Muskie. I think either sanction would work.
13 That is the purpose. The purpose isn't to collect a lot
14 of funds; the purpose is to create.

15 Senator Randolph. I think your approach is wrong.
16 I understand what the need is as you see it, certainly for
17 the amendment. And having said all that, I vote no.

18 Mr. Tapp. We ask of Senator Muskie, I guess. He
19 votes how?

20 Senator Randolph. No. I have to vote.

21 Mr. Tapp. Senator Muskie?

22 Senator Muskie. No.

23 Mr. Tapp. Senator Gravel?

24 Senator Charles. Yes, by policy.

25 Mr. Tapp. Senator Chilton?

Senator Mallory: Aye.

Mr. Vago: The motion is carried by a vote of eight to five.

Senator Hart: Now, would you read the outcome again?

Mr. Vago: Eight to five, Senator.

Mr. Billings: Senator Baker didn't vote.

Senator Hart: Senator Gravel, could you take up the cost of litigation? And if you are prepared to, I will have the staff explain that. The issue is the cost of litigation, Item No. 18 on the agenda. Staff will report.

Mr. Cummings: Senator, I believe that Senator Gravel's intention is to replace the provision that is in the Senate bill S. 352 with a comparable provision of the House bill. It appears in the Senate bill text at page 83, Section 36 of the bill.

Mr. Billings: S. 352, page 82, Section 36, subsection (d) would be stricken and substituting --

Senator Gravel: The key element is on the part of the judge of the court whether or not best involved would be recovered rather than awarded. What you could get is this: A situation somebody chooses not to comply, decides to fight the problem in court and win it on a technicality and the judge would be misled on pure ground and pay his attorney fees for fighting the government and enforce the law because of a technicality.

1 Obviously, we would rather have it in the judge's
2 judgment you know all the facts right there and make a
3 judgment whether the person can recover cost.

4 Senator Burdick: In other words, I can bring a lawsuit
5 against you, Ince, and still get attorneys' fees?

6 Senator Gravel: Say that again.

7 Senator Burdick: I can bring a lawsuit and lose in
8 that court and still get attorneys' fees?

9 Mr. Cummings: Under his provision -- well, two
10 provisions, Section 307, a provision of the Clean Air Act,
11 the first part of Senator Gravel's would add to the judicial
12 review provision of the existing law and the ability to
13 award cost presently is the citizen suit provision of the
14 existing law.

15 The second part of his proposal would add a new provision
16 to the enforcement section of the act, allowing the court
17 to award the cost of litigation to a party against whom
18 enforcement action is brought by the government when the
19 court finds that such action is unreasonable. This is
20 to prevent harassment, but not a mandatory award. This
21 is discretionary authority of the court, as Senator Gravel
22 described, to award costs in the case of suits by the
23 government.

24 Senator Burdick: As I read the description here, under
25 the law today the attorneys' fees are awarded to the prevailing

cents. And cost is being reduced, isn't it?

Mr. Cummings. Yes.

Senator Burdick. Therefore, you don't have to prevail to get the cost?

Senator Gravel. No; you may not get any cost at all. The judge decides not to give anybody cost.

Senator Burdick. But if he prevails, he gets cost without court discretion?

Mr. Cummings. No, sir.

Senator Burdick. Under the present committee bill, I am right, then.

Senator Gravel. So. Only the winner gets cost; under the Senate bill it is mandatory.

Senator Anderson. Under your proposal, it may or may not receive --

Senator Gravel. Yes. It is up to the judge who is there and knows the facts.

Senator Hansen. I thought I heard you say that the loser could be awarded.

Senator Burdick. That is possible under the discretion of the court.

Mr. Cummings. Just as it is possible under the citizen's court provision of section 156. The purpose was to allow, particularly public-interest litigants, to be able to participate. And in limited circumstances where there was

1 a legitimate case, it is in the discretion of the court
2 to award cost.

3 Senator Anderson. I like the amendment. I think it
4 makes more sense to let the judge make a decision of this
5 sort.

6 I am ready to vote.

7 Senator Benson. That is what you're doing?

8 Senator Gravel. Yes.

9 Senator Burdick. I want a roll call on this. I think
10 that the old rule the prevailing party gets the cost and
11 the losing party does not get cost, we have known that in
12 the law suits for years and years and years.

13 Senator Benson. I have been trying to get the difference
14 here.

15 Senator Anderson. I just thought in most cases the
16 court does have that discretion.

17 Senator Burdick. Depends on what your statute is.
18 You get your automatic cost and discretionary cost, but the
19 winner always gets the so-called statutory cost.

20 Mr. Chairman. The problem is this act was interpreted
21 because of a specific grant of authority under 74 to the
22 court to award cost. It has been incorporated that Section.
23 367 does not allow the court to award cost.

24 Senator Burdick. I understand that, but we have the
25 discretion to do it.

1 Mr. Cummings. He does not under the authority of
2 Section 307 without an amendment to the law.

3 Senator Hart. Can you give Senator Muskie a citation
4 of that opinion?

5 Mr. Cummings. Yes.

6 Senator Muskie. You mean Section 304 and 307 both
7 give authority to award cost?

8 Mr. Williams. Section 304 of spinning law gives the
9 court discretion to award cost. In 1970 the committee did
10 not include a similar provision in Section 307. The courts
11 have held, in essence because the Congress was specific
12 with respect to Section 304, if it had wanted the courts
13 to have discretion with respect to 307 it would have said
14 so. The purpose is to make it specific.

15 Senator Muskie. So we have a proposal to change the
16 committee bill?

17 Mr. Cummings. The language in the committee bill that
18 Senator Gravel is suggesting would here accomplished that
19 purpose.

20 Senator Muskie. The committee bill does that, too.

21 Mr. Cummings. It makes it clear but does not give
22 discretion and makes a mandatory award to the prevailing
23 party.

24 Senator Muskie. The last sentence in the paragraph
25 provides discretion for --

Mr. Billings. Correct.

Mr. Cummings. The history in the committee was that

Senator Buckley was opposed to the amendment to the bill for the purpose of passing it. Senator Buckley had no amendment which he referred to as a deep-pocketed amendment, and an amendment intended to restrict the government in raising suits against private parties. The amendment was then combined.

Senator Muskie. Is that a history of that raising suits?

Mr. Cummings. That was Senator Buckley's feeling.

Mr. Billings. In the opinion of the staff, no.

Senator Cardick. As I understand this amendment that prevailing parties, it is possible for the court in its discretion to not award his cost?

Mr. Billings. No, not in the committee bill.

Senator Cardick. I mean in the amendment.

Mr. Billings. Yes.

Senator Cardick. But leave it to the discretion of the court as to whether or not to award costs to the losing party?

Mr. Cummings. That is the case only under 107 Judicial review provisions.

Senator Hart. Is there a second?

Senator Anderson. Second.

Senator Hart. The General amendment has been moved and seconded. Mr. Hart will call the roll.

Mr. Yago: Senator Anderson?

Senator Anderson: Yes.

Mr. Yago: Senator Hiram?

(No response.)

Mr. Yago: Senator Pearson?

Senator Pearson: No.

Mr. Yago: Senator Burdick?

Senator Burdick: No.

Mr. Yago: Senator Claflin?

(No response.)

Mr. Yago: Senator Culver?

Senator Hart: Yes, by proxy.

Mr. Yago: Senator Hennrich?

(No response.)

Mr. Yago: Senator Gravel?

Senator Gravel: Yes.

Mr. Yago: Senator Hart?

Senator Hart: Yes.

Mr. Yago: Senator McClellan?

(No response.)

Mr. Yago: Senator Mortimer?

(No response.)

Mr. Yago: Senator Neftali?

Senator Neftali: No.

Mr. Yago: Senator Stafford?

(No response.)

Mr. Yago: Senator Wallop?

Senator Wallop: No.

Senator Hart: Mr. Yago, what is the parliamentary situation?

Mr. Yago: We have three members who have entered the room since the roll call began. We could call their names and give them an opportunity.

Senator Domenici?

Senator Domenici: No.

Mr. Yago: Senator McClure?

Senator McClure: No.

Mr. Yago: Senator Boylston?

Senator Randolph: Yes, by proxy.

Mr. Yago: Senator Santford?

Senator McClure: Yes, by proxy.

Mr. Yago: Senator Randolph?

Senator Randolph: Yes.

Mr. Yago: The motion is carried by a vote of seven to six.

Senator Hart: Let me recapitulate where we stand at ten to four. It has four issues which have been discussed or debated and voted on which are pending, and let me list three.

What is the status of H.R. 80's representation in

the courts?

Mr. Billings. That has been resolved.

Senator Hart. No. 15, Fuel additives?

Mr. Billings. That is pending.

Senator Hart. No. 12?

Mr. Billings. Pending.

Senator Holliba. Thirteen what?

Senator Hart. We have two things, 12 and 13 pending.

We have yet to take up No. 5, nonattainment, Mr. Randolph's;

No. 6, extension of deadlines and nonattainment areas,

Mr. Randolph's; No. 7, notification of hazard, Mr. Stafford's;

No. 11, review board, Mr. Randolph's.

Mr. Vago. I think No. 8 is Senator Randolph's. My understanding of the agenda is a general discussion.

Senator Hart. All right, 12 and 13 are under consideration. No. 15 is being discussed. No. 16 is my amendment.

Mr. Billings. You skipped No. 14.

Senator Hart. Oh, that is right. That is related to 14; 14 and 15 are together.

What is the pleasure of the committee as to today and tomorrow and so forth? For the purposes of suggestion, let me suggest we disperse. If Senator Grassley wishes to have the high-altitude question today, and go forward tomorrow on the pending questions and on other amendments.

1 yet undiscovered of.

2 Senator Domenici. Mr. Chairman, if I thought you
3 were not going to have another full meeting, I would agree
4 to take the high altitude up now. But I would appreciate
5 it if we could put it off. I have not had an opportunity
6 to ask the group of people that appeared before me to ask
7 what it is in the marketplace.

8 I would agree to no more than three or four minutes
9 by way of explanation and then vote, but I prefer to put it
10 off until the next meeting, if I could.

11 Senator Hart. You are the proponent and I think we
12 are at your pleasure.

13 Senator Domenici. I won't drag it along.

14 Senator Randolph. Are you discussing the meeting
15 tomorrow?

16 Senator Hart. Yes, sir, and how long to go today.

17 Senator Randolph. I would rather talk to tomorrow
18 first for just a moment. The President will be in West
19 Virginia. He knows the Route which he should visit. But
20 I will be there and I will not be here at all tomorrow.

21 Now, that doesn't mean that I wouldn't want the committee
22 to go ahead to the next day. So, are you ready to carry on
23 tomorrow?

24 Senator Hart. I think I need the latest Committee
25 in the morning. That doesn't mean the rest of the committee

45 15 can't go on.

2 Senator Randolph. Pleased, would you carry on?

3 Senator Benton. I have the Finance Committee on the
4 tax bill in the morning, but I will be in and out.

5 Senator Randolph. How many can be here tomorrow, because
6 I want you to move ahead in my absence.

7 Senator Haskell. Tomorrow afternoon we have floor
8 activity. I would think we would accomplish very little
9 tomorrow afternoon, and I can't be here in the morning
10 because I have the Budget Committee.

11 Senator McClure. Neither can I.

12 Mr. Billings. Three of the major amendments are the
13 chairman's.

14 Senator Hart. I think we have about four principal
15 amendments left, three of which are yours.

16 Senator Randolph. You mean we could finish today?

17 Senator Hart. No.

18 Senator Randolph. That is what the Majority Leader
19 asked, but we finish today. But I am ready to offer the
20 amendment and to have whatever discussion that is necessary
21 on them.

22 Senator Hart. Orally?

23 Senator Randolph. Yes. I am ready to do that. Would
24 that help? And forget tomorrow because of the intended
25 floor action in the afternoon and Senator Haskell's absence

1 in the morning.

2 Senator Bentsen. I could be in and out tomorrow.

3 Senator Muskie. Could we discuss the bill in the
4 next hour?

5 Senator Hart. If members restrain themselves, which
6 is a difficult thing.

7 Senator Muskie. I would be willing to offer a motion
8 now at 5:00 o'clock that we vote on and report the bill out,
9 whatever its condition.

10 Senator Randolph. I am ready to offer the amendments.

11 Senator Hart. Why don't we proceed, then?

12 Senator Randolph. I will ask you to give me two or
13 three minutes only to say good-bye to a constituent.

14 Senator Hart. The staff will recapitulate us on fuel
15 additives and we will vote.

16 Mr. Billings. The proposal on fuel additives, which
17 has been distributed to the members, provides three -- it
18 has three elements. One, it would prohibit the addition
19 of any new fuel additive to fuels which were the basis for
20 certification for automatic emission standards for motor
21 vehicles beginning with the 1975 model year.

22 Secondly, it would prohibit, after 90 days, continued
23 use of any fuel additives which were added to certification
24 fuel after the certification, 1975 model.

25 Three, it would provide a waiver of those two provisions

on the finding by the Administrator that the fuel additives would not interfere with the functioning of emission systems or otherwise endanger public health and welfare.

The amendment is the result of a concern that was raised at hearings and general discussions that new additives have been introduced, the effects of which may be to interfere with the performance of emission control systems on cars, the effect of which could be to render the system either unfunctional or less functional.

This is approximately 30 million cars; the public investment is approximately \$4.5 billion. According to information the staff obtained, it would increase the demand for fuel in order to produce the so-called clear pool, unleaded gasoline by three to seven percent. That is according to information from Gulf Oil and Exxon.

The addition of additives without prior approval also impact on the ability of the industry to develop new technology because it appears on the basis of initial tests from the industry, from new technology such as three-way catalysts, it may not be able to perform at the level they were anticipated.

And one of the additives is the benzene MPV.

Senator Burdick: I want to get information here. Does this mean all 17 variations of additives you see at the gasoline station all will have to be tested after the

15 12 1 law is passed?

2 Mr. Billings. No, sir, only to the extent they are
3 proposed to be added to unleaded fuel. It would not affect
4 the regular or high-test.

5 Senator Burdick. It doesn't mean the additives you
6 put in the car, does it?

7 Mr. Billings. Oh, those. No.

8 Senator Wallop. That is not what it says.

9 Mr. Billings. I think what Senator Burdick is speaking
10 about is the small cans like Bardoll or something like that.

11 Senator Wallop. That is what this amendment says. It
12 would prohibit that.

13 Mr. Billings. I think the ~~term~~ is of general use in
14 light-duty motor vehicles. It is not intended to create
15 that result. If it does, it is improperly drafted.

16 Senator Hart. Can't you just say, "Fuel additive"?

17 Senator Wallop. STP and all of those are in quite
18 general use.

19 Senator Hart. There has to be a term of the art.

20 Mr. Billings. It is incorrectly drafted, Senator;
21 you are correct.

22 Senator Bentsen. Let me comment, if I may here.
23 Obviously it is a matter of concern whether some of these
24 additives are poisoning these catalyzers. Apparently we
25 don't have precise information. And I have been provided

numbers by industry saying the share approximately, will be forty to a hundred million barrels. You can see the divergence of opinion, and from seven to three percent are the numbers that I have been given.

So it is obviously a matter of concern, and it gets to be a problem of the catalyst and things like balance of trade and conservation of energy, and all of that is what we are weighing in this decision.

Senator Hart. Any other questions?

Senator Domenici. Mr. Chairman, I was present, I believe, when testimony was solicited regarding, I think I would even say probable, impact of the manganese additive. But I think, if the effect of this amendment is to prohibit that unambiguously in 90 days, I think that is a wrong approach.

I think if we do that we are going to require a rather substantial refining capacity add-on just to get the output we want, and we are already in a refinery shortage market and an energy problem of significance. I certainly would like to address the issue in some way.

I think it is deplorable that one part of the industry is moving with new technology and the other has not checked the capability of that important necessary addition. But I don't support an amendment at this point that will say absolutely you can't use that manganese additive in 90

12 20 days. There has to be another way to address the issue.

3 Senator Bentsen. You are not going to make up refining
4 capacity in 90 days. You are talking about years to bring
5 that about.

6 Senator Wallop. Small refineries in particular. We
7 just may be signing a death warrant for some of those who
8 just don't have the technology or the capital to move from
9 the legislation down to the clean fuels requirements.

10 Senator Bentsen. I frankly think you need more time to
11 try to resolve this.

12 Senator Wallop. Wouldn't it be possible to draft this
13 in such a way that EPA has admitted by their letter that
14 they have not developed a standard testing and it takes
15 three years to come up with results? Wouldn't it be better
16 to lay this on the industry and ask for results in 18 months?

17 Ms. Cudlipp. Senator, the report is that industry,
18 the oil industry, the auto industry and EPA, supposedly,
19 are cooperating to get a study and predicting the results
20 would be available between six and 12 months from now.
21 I think we can get results prior to the three-year period
22 that Leon alluded to. We could require a study of nine
23 months or twelve months.

24 Senator Wallop. Knowing the way the government normally
25 works, what about 18 months?

26 Senator Muskie. You know what strikes me about

4A-21 1 this is like that witness two or three years ago -- and I
2 remember his name, but won't use it. He said he didn't
3 supply certain answers because he wasn't asked the right
4 question.

5 Now, we provided for the elimination of lead from fuel
6 because it was clear on the record that it would destroy
7 the catalyzer. Surely it must have been implicit to them
8 that nothing else was to be substituted for it that would
9 have the same effect. Are we required as a government when we
10 enact legislation of that kind to try to anticipate all
11 the possible additives that might be added that would have
12 the same effect so we could explicitly prohibit them at the
13 same time we prohibited the lead? Don't we have some right
14 to rely on the private sector to respond to what was the
15 clear intent of the legislation?

16 I don't know what the investment is that the American
17 consumer has made in the catalyzer. But it amounts to billions
18 of dollars. Catalyzer has can be destroyed within 15,000
19 miles, according to the best. When they are required by law
20 to last 50,000 miles. We should be on the defensive in
21 this respect.

22 Having passed that kind of a law and established that
23 kind of a policy, it becomes the target of those who are
24 going to limit this very soundly. And industry says to
25 the U.S. Government you should require us to do this now.

Now that this addition is in place you have to give us 18 months to find a way to correct what we are guilty of having done.

I don't know how you write a policy that can be effective if it can be torpedoed in that way. And what you are suggesting is encouraging them to do this kind of thing.

Senator Waller. No, sir, I am not. With all due respect, there is only a suggestion there might be trouble under certain high-octane temperatures. There is no clear evidence. But I agree we are playing around with the loss of American capital in America by reason of the excess oil that goes out and the balance of payments problem.

Senator Muskie. We have got here, according to a letter written by Mr. Charles Bowman, Vice President of Gulf in Houston, to Congressman Rogers, that the fuel penalty would probably be somewhere between one and a half and three percent in terms of overall national energy consumption.

But the point is we didn't put the WPM in the gasoline. There was nothing in the law that implied they had a right to do that without checking the consequences. And what can these companies do. Find another one we haven't identified and put it in and a year later or so we will discover it and its harmful effect and they can come to us and say, "O, Senator, you can't force us to take this out because to take it out will have these economic consequences and energy

consequences," and so on?

I find it the wildest kind of evasion of the purpose of the law. It isn't a violation particularly because we weren't smart enough to anticipate there would be this kind of indirect assault on it. But do you have to anticipate that kind of response? Isn't there such a thing as statesmanship in the industry that tries to meet not only the letter of the law but its clear objectives?

One of the reasons it took us so long to get the catalyst in place was because lead would destroy it and no way of getting 50,000 miles of life out of the catalyst. So we finally did that, eliminated the lead so it gives us the chance to get the 50,000 life, and now they slipped in this other additive that destroys what we did and what the consumers have paid for.

Senator Wallop. But, Mr. Chairman, it really doesn't do that, and your letter from Mr. Rogers is different from my letter, and they talk about slightly over three percent. And they also say they have tested it on several cars up to 35,000 miles in that same letter.

Senator Muskie. Here is the testimony of General Motors on February 24th. These are quotation marks here, also: "Therefore, these negative test results indicate to us, at least, the only course of action is delay the use of this additive in unleaded fuel until better science can

be evaluated."

Mr. Brachmann. Provided no the staff over the lunch break.

Senator Waskie. While was a photo of a catalyst totally clogged at 15,000 miles in California. They found a 35-percent increase in hydrocarbons at 15,000 miles.

"They did not think it would have a deleterious effect on the converter and the 50,000-mile process."

If they could add it to the gasoline that casually that they did not think it would have a deleterious effect without doing anything to test it out, why should the public be required to meet a more stringent test of whether or not to remove it? I find that logic very hard to follow. Very hard to follow.

Senator Wallop. Mr. Chairman, I read another document. This is a letter from Gulf's Mr. John P. Decany, Director of Emission Control Technology Division. The date of this letter was August 16th last year. They were trying to investigate the effects of MBI on catalyst activity durability. Two comparison cars, Ford and Chevrolet, accumulated 50,000 miles. After 50,000 miles there is no evidence of catalyst plugging in any of the cars. Exhaust pressure at idle and up to 50 miles per hour are being measured of the catalyst. And Ford, which is operating on manganese fuel, is producing significantly lower CO emissions than non-manganese fuels.

jh 25 1 All I am saying is that we are gambling with a portion
2 of the nation's fuel supply or something, we really don't
3 know is the cause of gasoline.

4 Senator Mikie. I am suggesting, Senator, if the public
5 should be held to the requirement of 18-month test in order
6 to prove that the thing should be removed, that it is not
7 unreasonable to have required of the industry that they make
8 an 18-month test to justify its inclusion. I mean, the
9 burden of proof is the reverse. They haven't tested this
10 thing. What proof have they got it is going to have that
11 kind of impact on the nation's energy supply?

12 If they tested it sufficiently to get hard evidence
13 on that point, then they should have accompanying tests
14 just as thorough and comprehensive and not four cars.

15 Senator Wallop. It is a statistical matter, the effect
16 it has on the energy supply. That is not a test that exists.

bl c/s,
jh

Senator Muskie: I have no idea. I have never heard
of any small car less than 2000 cc. What I am saying is that
the proposal seems to be to impose a restriction that would
on the public to require something that there is sufficient
evidence --

Senator Helms: But it is EPA that is stopping them
from testing it or this delay would have been answered by
now.

Senator Muskie: As I understand it, this has been
added by the oil companies to gasoline. EPA hasn't stopped
them from adding it and now ordered them to remove it at
this point. And neither of which we haven't approved, the
addition or mandated the elimination and the companies have
put the stuff in the gasoline and now they say to us the
burden is on you to prove that we should take it out. That
is a queer sort of reverse burden to apply when the Congress
clearly established a public policy and we still haven't
implemented it fully.

We have been struggling for eight years. They persuaded
this committee we don't want a catalyst and fought it every
step of the way and blocked its development because they are
against it and it was developed by people outside the automobile
industry.

So finally, after passing a 1970 law, we got the
automobile companies dragging their feet to meet technology

until finally in '73 they came up with the catalyst and finally did turn to it almost 10 years after they told us it wasn't too common and clearly identified lead as the single most important technological threat to the use of the catalyst. So the world thing is right out in the open, this isn't something slipped over on the oil companies.

So you have found a substance that has the same effect on the basis of tentative results presented by the automobile industry and testimony before this committee and we are told we must somehow have got burnt.

Senator Willing. It is not a new additive, it is 30 years old. But EPA had not issued the protocol.

Mr. Billings. It is not the certification of fuel.

Senator Willing. But not yet issued the protocol.

Mr. Billings. That protocol, however, Senator, does not relate to the effect on emission. These are health protocols. And the agency has been lax in that regard. The MPT has been around and recently added to the river pool and increasingly added to the river pool, and as much if it has a deleterious effect on catalysts the test will be in the stripping of them on the road and down that EPA knows in, but no specific test protocol is that process.

Senator Willing. Would you now state the latest EPA MPA?

Mr. Billings. The your information, as well as the moving

1 should unambiguously with the terms of a study on the basis
2 of which the data can be generated or not against MMT under
3 Section 214(c) of the Clean Air Act should such action be
4 necessary. However, the length of time required for such
5 a study, we estimated that the technical work alone will
6 require 1 year, and that the rulemaking process will take
7 substantial additional time, makes it unlikely that prompt
8 action can be taken under Section 211. That is why we took
9 the interim step of requiring the inclusion of MMT in
10 certification gasoline as soon as possible." That relates
11 to new cars.

12 "The preponderance of the evidence at this time suggests
13 that MMT may well be incompatible with existing emission
14 control systems; the further studies we plan to make are
15 expected to settle this matter in a definitive manner, but
16 will take a good deal of time to complete."

17 Senator Burdick. Would the staff answer a question for
18 me? Did we pass a law originally that did specify the
19 type of fuel the companies should use, or did we simply say
20 it should not contain certain things? The second I am asking
21 that, is there anything illegal about this additive, and
22 if there isn't was there anything illegal about the oil
23 companies buying "X" amount of additive to supply? or only
24 gasoline is it illegal to sell less than the amount
25 given for the additive? or is it illegal to sell less than
26 the amount given for the additive?

was there anything in the statute that said other than the
gas should not contain lead?

Mr. Billings. The statute said the administrator had
the authority if he found there was a fuel or fuel additive
that was incompatible with the emission control system that he
could require its removal so it would not interfere with
that system, so he required the removal of lead.

Senator Burdick. What about anything else?

Mr. Billings. Under the regulatory authority relative
to the emission standards, he established certification fuel
and the certification fuel is the basis on which they
determined whether or not the car meets the standards. What
has happened is that the certification fuels -- certification
fuels which is this clear, unleaded gasoline has now had
an additive added to it. There is nothing illegal about that,
nothing that says to the company you have acted illegal.

They had the authority to do it. The responsibility
then evolves back to the administrator to prove that interference
with the emission control system.

The problem is you have 30 million cars out there that
have emission control systems and in the 10-month or 12-month
year period you are going to get another 30 million cars hit
on the road, and we find that is hampering the program, you
have 60 million cars on the road with no emission controls
and a horribly fantastic public health consequence.

Senator Bland. As soon as they find out this additive is injurious to the catalyst, is there a time factor when fuel supplies can be replenished with good fuel?

Mr. Wallace. The provision says anything that was added that was not in certification has to be taken out in 90 days. Two things can happen. One, in the 90-day period the fuel manufacturers could produce evidence to the administrator to satisfy him that it did not interfere with the catalyst and the administrator could waive that prohibition and let them continue to use JWF.

If they could not produce this data in that 90 days, they would have to remove it. And as soon as they could produce hard data, he could waive any time off the 90 days.

Senator Bland. Why isn't that adequate to take care of the situation?

Mr. Billings. That is the proposal of the amendment.

Mr. Steward. The existing law, Senator, allows the administrator to ban JWF today if he wishes to and has every evidence to do it. He can ban JWF today under existing law and JWF can't be in the fuel stream if the administrator has the evidence to do so.

Mr. Braithwaite. The question is the burden of proof he has to go through. In this case the administrator has to initiate an action that is going to lead to an extremely expensive court proceedings just like the lead situation.

1 regulations, so he has to get a lot of scientific study
2 done before he can go ahead that kind to get it out.

3 The problem is there will take quite a bit of time for
4 the study so they can lose through a court cost of \$500.

5 Mr. Mayhew. The law does allow the administrator,
6 if he finds WHO violations, to take WHO out. The point that
7 Carl raised about the time that it was required may be true,
8 out at the same time if the Congress wishes to impose its own
9 judgment and determine before the scientific test that WHO
10 is bad, I think Senator Wallop's point was that may have a
11 rather difficult time, you know, cause difficult times in the
12 refining industry and reduce us to a five-percent loss in
13 the gasoline, you know. Five percent fuel penalty to gasoline
14 production.

15 Senator Burdick. If some time is used to relinquish
16 the storage, that wouldn't be anything lost?

17 Senator Wallop. A refining loss, Senator. The repurpos-
18 ing loss works whether you are big or little. But it is like
19 soy protein in hamburgers, you get more out of a gallon than
20 you would otherwise. The lower your grade, a fuel can achieve
21 a certain level of octane.

22 Senator Chafee. May I ask a question? Suppose a gasoline
23 company were going to add something to their blend yet that
24 would give you increased mileage and guaranteed to meet your
25 needs in 50,000 miles, that government agency has told you

1 from doing that? Is there a government agency?

2 Mr. Cummings. Yes. Assuming that you are talking about
3 a car which when certified was certified to some standards
4 under the Clean Air Act --

5 Senator Chafee. Set aside the Clean Air Act.

6 Mr. Cummings. I don't think there is any.

7 Senator Chafee. In other words, are we backing into
8 the new territory? I am not objecting. Now we are saying
9 if a manufacturer produces something that might do some
10 harm to the emission control devices, that you want to
11 prevent that, too. And the emission control device cost
12 what, \$150, \$200, \$200 say?

13 But are we going to do anything to protect the car owner
14 from Esso or whoever it might be that puts something in that
15 no question will wreck your engine? What about that?

16 Mr. Cummings. The emission control device wrecks the
17 engine?

18 Senator Chafee. Wrecks the whole thing.

19 Mr. Billings. That is not in the jurisdiction of this
20 committee.

21 Senator Chafee. That is a nice out.

22 Mr. Billings. I am thinking of unrelated to the Clean
23 Air Act.

24 Mr. Cummings. The only thing I can think of is if the
25 gas is worth something when you buy it. It is not Government

1 regulation.

2 Senator Chafee. That is the right of the consumer to
3 go after the oil company. So we are taking quite a step
4 forward here in this Act.

5 Mr. Cummings. Already have, yes. Section 211 of the
6 1970 Act did that.

7 Senator Chafee. Whose in charge?

8 Senator Gravel. One of the questions if you bought a
9 gas that was added or made your car run or wrecked your
10 spark plugs, but the implication is if something happens to
11 the emission control system that the driver and the consumer
12 isn't really concerned because, you know, if it doesn't
13 affect the driveability of the car and mileage, he has no
14 incentive to get it fixed or to exercise a right to warranty.

15 Senator Anderson. We have the 90-day provision and
16 the manufacturers already know that this committee is concerned
17 about the problems. And they are really getting much more
18 than 90 days, but 90 days from enactment of it. Obviously
19 this isn't going to be signed tomorrow or the next day.
20 Everybody would look.

21 So they are really getting six, seven, eight months. It
22 seems to me under the subdivision 3 we need an appropriate
23 time provision. In line 3 of subdivision (d)3, when it says
24 paragraph 1 and 2 of this sub-section, "if he determines,"
25 and we should add language, "within six months." We would

1 of time required. We would give the agency six months from
2 date of enactment of this act to see if the product qualified.
3 I think, after talking to some of you, the agency people feel
4 they need that additional time.

5 Mr. Billings. You want six months from the date of
6 application by the manufacturer to approve or deny?

7 Senator Anderson. That is correct.

8 Mr. Billings. Is that consistent with your earlier
9 proposal, Senator Chafee? If an application for waiver under
10 paragraph 3, the administrator would have to rule within six
11 months on whether or not he was going to grant the waiver.
12 So he would have to take affirmative action of approving or
13 denying that waiver.

14 Senator Chafee. And failure to take it is granting.

15 Senator Anderson. We talked about this this morning,
16 this would certainly be appropriate as far as I am concerned.
17 I would like just like to ask this question: Would it be
18 appropriate for some manufacturer to make application sooner?

19 Senator Randolph. Senator Adnerson, will you preside,
20 please?

21 --Mr. Billings. That process is ongoing.

22 Senator Anderson. We are concerned that this matter
23 be brought to a head at the earliest possible moment. I offer
24 that as an amendment.

25 Senator Wallop. I will second it.

1 Senator Anderson. Any discussion?

2 All in favor say aye. Ayes have it, sorry.

3 (Laughter.)

4 Senator Anderson. Motion on this as amended. Are you
5 ready to vote on this provision as amended?

6 Senator Chafee. I didn't hear the amendment.

7 Senator Anderson. The one we just talked about.

8 Senator Chafee. I thought we voted on it.

9 Senator Anderson. We just amended the motion on whether
10 or not this fuel additive section should be adopted as amended.

11 Senator Wallop. One further qualification, that the
12 staff does take into account Senator Burdick's question about
13 all other additives.

14 Senator Anderson. All in favor say aye.

15 Senator Wallop. No, I think we ought to have a roll
16 call, Mr. Chairman. There are a number of proxies here.

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Senator Hart. Call the roll.

Mr. Yago. Senator Anderson?

Senator Anderson. Aye.

Mr. Yago. Senator Baker?

Senator Wallop. No, by proxy.

Mr. Yago. Senator Bentsen?

(No response.)

Mr. Yago. Senator Burdick?

(No response.)

Mr. Yago. Senator Chafee?

Senator Anderson. He just voted before he left. He
voted aye.

Mr. Yago. Senator Culver?

Senator Hart. Aye, by proxy.

Mr. Yago. Senator Domenici?

(No response.)

Mr. Yago. Senator Gravel?

Senator Hart. Aye, by proxy.

Mr. Yago. Senator Hart?

Senator Hart. Aye.

Mr. Yago. Senator McClure?

(No response.)

Mr. Yago. Senator Moynihan?

(No response.)

Mr. Yago. Senator Muskie?

jh 2 1 Senator Anderson. He is right out there. Why don't
2 you check? I talked to him about it.

3 Senator Hart. Senator Muskie, aye, by proxy.

4 Mr. Yago. Senator Stafford?

5 Senator Wallop. Aye, by proxy.

6 Mr. Yago. Senator Wallop?

7 Senator Wallop. No. And Senator McClure no, by proxy.
8 And I withdraw Senator Baker's. I misread the signature.

9 Mr. Yago. The chairman will be off the phone in a
10 minute.

11 Senator Hart. I think, John, there is a real question
12 as to whether we should go forward. I am not sure we can
13 get much done with the attendance that we have.

14 Mr. Yago. I think the chairman expressed similar
15 concern.

16 Senator Anderson. Do we stand adjourned?

17 Mr. Yago. Unless there is a desire to discuss when
18 the committee might want to meet again.

19 Senator Hart. Let's discuss that.

20 Mr. Billings. Is the chairman back on Friday?

21 Mr. Yago. No.

22 Mr. Billings. So it would have to be Monday.

23 Mr. Yago. Monday would be the earliest date. There
24 is a committee hearing scheduled for Monday morning.

25 Mr. Billings. That is the nominee's hearing. Maybe

jh 3 1 we could move that earlier in the morning.

2 Senator Hart. How long is that?

3 Mr. Yago. I believe it is at 9:30 now.

4 Senator Hart. How long would that take?

5 Mr. Yago. It is being held for the convenience of the
6 Minority. From what I hear, there will be extensive
7 questioning.

8 Mr. Billings. Let's see if we can't get that moved
9 up.

10 Senator Hart. As an alternative, this Monday afternoon.
11 I think we can wrap this up in an hour and a half if we
12 can get members' attendance.

13 We have four amendments to discuss; three by the
14 chairman and one by myself.

15 Mr. Yago. We will shoot for Monday afternoon.

16 (Whereupon, at 4:38 p.m., the committee recessed, to
17 reconvene subject to the call of the chair.)
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